

TN RE: PETITION FOR SPECIAL HEARING  
S/S Church Lane, 1379' W of  
York Road  
(101 Church Lane)  
8th Election District  
3rd Councilmanic District

Cardinal William H. Keeler  
Roman Catholic Archbishop of Baltimore - Petitioner

\* BEFORE THE  
\* DEPUTY ZONING COMMISSIONER  
\* OF BALTIMORE COUNTY  
\* Case No. 97-379-SPH

\* \* \* \* \*

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Deputy Zoning Commissioner for consideration of a Petition for Special Hearing for that property known as 101 Church Lane, located in the vicinity of York Road in Cockeysville. The Petition was filed by the owner of the property, Cardinal William H. Keeler, Roman Catholic Archbishop of Baltimore, a Corporation Sole, through their attorney, Thomas N. Biddison, Jr., Esquire. The Petitioner seeks approval of a waiver of Section 26-278 of the Development Regulations to permit the demolition of a structure listed on the Maryland Historic Trust List as BA-1807. The subject property and relief sought are more particularly described on the site plan submitted which was accepted and marked into evidence as Petitioner's Exhibit 1.

Appearing at the hearing on behalf of the Petition were Thomas N. Biddison, Jr., Esquire, and several representatives of the St. Joseph Church and School which is located on the property. There were no Protestants or other interested persons present.

Testimony and evidence offered revealed that the subject property consists of 9.174 acres, more or less, zoned M.L.-I.M. and is improved with a church and several accessory buildings, including two school buildings, a combination leadership hall and rectory, a garage, and an old residential structure, which is the subject of this request. The Petition-

*5/1/98*  
*WTC*  
*BP*

er is desirous of removing this structure, which at one time was used by the Church as a convent. The Church no longer uses the structure and wishes to remove same to make way for a new, 23,400 sq.ft. multi-purpose parish center. The proposed center will be attached to the existing church and school buildings via two breezeways. However, in order to proceed with the proposed improvements, the Petitioners need the special hearing relief in order to remove the old structure which is on the Maryland Historic Trust inventory List.

It should be noted that the subject building is not on the Baltimore County Landmarks Preservation List. However, as a precaution, the Petitioners requested the special hearing relief to permit the demolition of this structure. No one appeared in opposition to the relief requested and the Landmarks Preservation Commission has, in fact, reviewed the matter with no comment.

After due consideration of the testimony and evidence presented, it is clear that practical difficulty or unreasonable hardship would result if the relief requested in the special hearing were not granted. A denial of the waiver and requiring preservation of this residential structure would cause unnecessary hardship to the Petitioner and prevent them from moving forward with their plans. It has been established that the requirements from which the Petitioner seeks relief would unduly restrict the use of the land due to the special conditions unique to this particular parcel. In addition, the relief requested will not be detrimental to the public health, safety, and general welfare.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the special hearing should be granted.

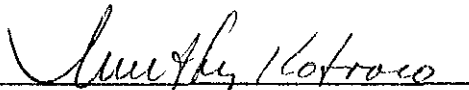
ORDER RECEIVED FOR FILING

Date

By

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 1<sup>st</sup> day of May, 1997 that the Petition for Special Hearing seeking approval of a waiver of Section 26-278 of the Development Regulations to permit the demolition of a structure listed on the Maryland Historic Trust List as BA-1807, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restriction:

1) The Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the relief granted herein shall be rescinded.

  
TIMOTHY M. KOTROCO  
Deputy Zoning Commissioner  
for Baltimore County

TMK:bjs

ORDER RECEIVED BY CHAIRMAN

Date

By



Baltimore County  
Zoning Commissioner  
Office of Planning and Zoning

Suite 112, Courthouse  
400 Washington Avenue  
Towson, Maryland 21204  
(410) 887-4386

May 1, 1997

Thomas N. Biddison, Jr., Esquire  
Gallagher, Evelius & Jones  
400 Park Charles  
218 North Charles Street  
Baltimore, Maryland 21201

RE: PETITION FOR SPECIAL HEARING  
S/S Church Lane, 1379' W of York Road  
(101 Church Lane)  
8th Election District - 3rd Councilmanic District  
Cardinal William H. Keeler Roman Catholic Archbishop of Baltimore,  
A Corporation Sole - Petitioners  
Case No. 97-379-SPH

Dear Mr. Biddison:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Special Hearing has been granted in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Zoning Administration and Development Management office at 887-3391.

Very truly yours,

A handwritten signature in cursive script, reading "Timothy Kotroco".

TIMOTHY M. KOTROCO  
Deputy Zoning Commissioner  
for Baltimore County

TMK:bjs

cc: Cardinal William H. Keeler, The Catholic Center  
320 Cathedral Street, Baltimore, Md. 21201-4413

Rev. Monsignor Paul G. Cook, Pastor, St. Joseph Church & School  
101 Church Lane, Cockeysville, Md. 21030

People's Counsel  
Case File





# Petition for Special Hearing

97-379. SPH

## to the Zoning Commissioner of Baltimore County

for the property located at 101 Church Lane, Cockeysville, MD 21030

which is presently zoned "ML-1M"

This Petition shall be filed with the Office of Zoning Administration & Development Management.

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

A waiver of Section 26-278 of the Development Regulations to permit the demolition of a structure listed on the Maryland Historic Trust List as BA-1807.

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Special Hearing advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser/Lessee: (Not Applicable)

(Type or Print Name)

Signature

Address

City

State

Zipcode

Legal Owner(s):

Cardinal William H. Keeler

Roman Catholic Archbishop of Baltimore,

(Type or Print Name) A Corporation Sole

Signature

(Type or Print Name)

Signature

The Catholic Center

320 Cathedral Street

547-5586

Address

Phone No.

Baltimore, Maryland

21201-4413

City

State

Zipcode

Name, Address and phone number of representative to be contacted.

Rev. Monsignor Paul G. Cook, Pastor

Name

101 Church Lane

Cockeysville, Maryland 21030

666-1619

Address

Phone No.

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

unavailable for Hearing

the following dates

Next Two Months

ALL

REVIEWED BY:

*[Signature]*

DATE 3/10/97

Attorney for Petitioner:

THOMAS N. BIDDISON, JR

(Type or Print Name)

GALLAGHER, EVELIUS, & JONES

Thomas N. Biddison, Jr

Signature

Gallagher, Evelius and Jones

400 Park Charles - 218 North Charles St.

Address

Phone No.

Baltimore, Maryland 21201 727-7702

City

State

Zipcode



ORDER RECEIVED FOR FILING  
Date  
By

MICROFILM

97-319 SPH

ZONING DESCRIPTION - ST. JOSEPH PARISH/COCKEYSVILLE

FROM THE POINT OF BEGINNING ON THE SOUTH SIDE OF CHURCH LANE A 30' PAVED RIGHT OF WAY A DISTANCE OF 1379 ± FROM THE CENTERLINE OF YORK ROAD WHICH IS A 80' RIGHT-OF-WAY:

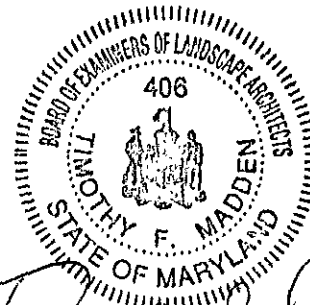
SOUTH 17 DEGREES 14 MIN WEST FOR A DISTANCE OF 614. 47'

THENCE RUNNING SOUTH 70 DEG. 30 MIN 20 SECONDS EAST FOR A DISTANCE OF 445.38'

CONTINUING SOUTH 84 DEG. 47 MIN 40 SEC EAST FOR A DISTANCE OF 198.34'

THENCE RUNNING N 6 DEG. 39 MIN EAST FOR A DISTANCE OF 623.31' TO A POINT NEAR THE R/W OF CHURCH LANE

THENCE RUNNING AND BINDING W/CHURCH LANE NORTH 75 DEG 45 MIN. WEST FOR A DISTANCE OF 629.20' TO THE PLACE OF BEGINNING. THIS PROPERTY LOCATED IN THE EIGHTH DISTRICT AND THE THIRD COUNCILMANIC DISTRICT OF BALTIMORE COUNTY, MD. THE SUBJECT PROPERTY CONTAINING 9.174 ACRES MORE OR LESS.



#### NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing in Towson, Maryland on the property identified herein as follows:

Case: #97-379-SPH  
101 Church Lane  
S/S Church Lane, 1379' +/- W of York Road  
St. Joseph Church & School  
8th Election District  
3rd Councilmanic  
Legal Owner(s):

Cardinal William H. Keeler,  
Roman Catholic Archbishop, a  
Corporation Sole

Special Hearing: to approve a waiver of the development regulations to permit the demolition of a structure listed on the Maryland Historic Trust List as BA-1807.

Hearing: Tuesday, April 15, 1997 at 2:00 p.m., 4th floor hearing room, County Courts Bldg., 401 Bosley Avenue.

LAWRENCE E. SCHMIDT  
Zoning Commissioner for  
Baltimore County

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Call 887-3353.

(2) For information concerning the File and/or Hearing. Please Call 887-3391.

3/341 March 27 C129987

## CERTIFICATE OF PUBLICATION

TOWSON, MD.,

March 27 1997

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on March 27, 1997.

THE JEFFERSONIAN,

*A. Henrichson*

LEGAL AD. - TOWSON

BALTIMORE COUNTY, MARYLAND  
OFFICE OF FINANCE - REVENUE DIVISION  
MISCELLANEOUS CASH RECEIPT

#379 BY JUL  
97-379 SPH

DATE 3/10/97

ACCOUNT

180016150

AMOUNT \$

250.00

RECEIVED

ST. JOSEPH'S PARISH (CREEKSVILLE)

FOR:

NEW RES. SPH

DISTRIBUTION

4250.00

VALIDATION OR SIGNATURE OF CASHIER

BA 0003, 11PM03-11-97

WHITE - CASHIER

PINK - AGENCY

YELLOW - CUSTOMER





Baltimore County  
Department of Permits and  
Development Management

Development Processing  
County Office Building  
111 West Chesapeake Ave  
Towson, Maryland 21204

AT-379 SPH

ZONING HEARING ADVERTISING AND POSTING REQUIREMENTS & PROCEDURES

Baltimore County zoning regulations require that notice be given to the general public/neighbor property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property (responsibility of which, lies with the petitioner/applicant) and placement of a notice in at least one newspaper of general circulation in the County.

This office will ensure that the legal requirements for advertising are satisfied. However, the petitioner is responsible for the costs associated with this requirement.

Billing for legal advertising, due upon receipt, will come from and should be remitted directly to the newspaper.

NON-PAYMENT OF ADVERTISING FEES WILL STAY ISSUANCE OF ZONING ORDER.

ARNOLD JABLON, DIRECTOR

For newspaper advertising:

Item No.: 379

Petitioner: <sup>Cardinal</sup> William H. Keeler

Location: St Joseph Parish / Cockeysville, md

PLEASE FORWARD ADVERTISING BILL TO:

NAME: Mr. Thomas H. Biddison, Jr., Gallagher, Evelius & Jones

ADDRESS: 400 Park Charles 218 North Charles Street  
Baltimore Md. 21201

PHONE NUMBER: 727-7702

AJ:ggs

(Revised 09/24/96)

Request for Zoning Variance, Special Exception, or Special Hearing

Date to be Posted: Anytime before but no later than 3/24/97

Format for Sign Printing, Black Letters on White Background:

## ZONING NOTICE

Case No.: 97-379-SPH

A PUBLIC HEARING WILL BE HELD BY  
THE ZONING COMMISSIONER  
IN TOWSON, MD

PLACE: \_\_\_\_\_

DATE AND TIME: \_\_\_\_\_

REQUEST: A WAIVER OF THE DEVELOPMENT REGULATIONS  
TO PERMIT THE DEMOLITION OF A STRUCTURE LISTED ON THE  
MARYLAND HISTORIC TRUST LIST

POSTPONEMENTS DUE TO WEATHER OR OTHER CONDITIONS ARE SOMETIMES NECESSARY.  
TO CONFIRM HEARING CALL 887-3391.

DO NOT REMOVE THIS SIGN AND POST UNTIL DAY OF HEARING UNDER PENALTY OF LAW

HANDICAPPED ACCESSIBLE

11/20/2010

TO: PUTUXENT PUBLISHING COMPANY  
March 27, 1997 Issue - Jeffersonian

97-379 SP/H

Please forward billing to:

Thomas H. Biddison, Jr., Esq.  
Gallagher, Evelius, & Jones  
400 Park Charles  
218 N. Charles Street  
Baltimore, MD 21201  
727-7702

---

#### NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 97-379-SPH

101 Church Lane

S/S Church Lane, 1379' +/- W of York Road

St. Joseph Church & School

Legal Owner(s): Cardinal William H. Keeler, Roman Catholic Archbishop, a Corporation Sole

Special Hearing to approve a waiver of the development regulations to permit the demolition of a structure listed on the Maryland Historic Trust List as BA-1807.

HEARING: TUESDAY, APRIL 15, 1997 at 2:00 p.m., 4th floor hearing room, County Courts Bldg., 401 Bosley Avenue

LAWRENCE E. SCHMIDT

ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.  
(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, PLEASE CALL 887-3391.



Baltimore County  
Department of Permits and  
Development Management

Development Processing  
County Office Building  
111 West Chesapeake Avenue  
Towson, Maryland 21204

March 21, 1997

97-379SPH

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 97-379-SPH

101 Church Lane

S/S Church Lane, 1379' +/- W of York Road

St. Joseph Church & School

Legal Owner(s): Cardinal William H. Keeler, Roman Catholic Archbishop, a Corporation Sole

Special Hearing to approve a waiver of the development regulations to permit the demolition of a structure listed on the Maryland Historic Trust List as BA-1807.

HEARING: TUESDAY, APRIL 15, 1997 at 2:00 p.m., 4th floor hearing room, County Courts Bldg., 401 Bosley Avenue

A handwritten signature in black ink, appearing to read 'Arnold Jablon', is written over a horizontal line.

Arnold Jablon  
Director

cc: The Catholic Center  
Rev. Monsignor Paul G. Cook  
Thomas Biddison, Jr., Esq.

- NOTES: (1) YOU MUST HAVE THE ZONING NOTICE SIGN POSTED ON THE PROPERTY BY MARCH 31, 1997  
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.  
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 887-3391.





Baltimore County  
Department of Permits and  
Development Management

Development Processing  
County Office Building  
111 West Chesapeake Avenue  
Towson, Maryland 21204

April 10, 1997

Thomas N. Biddison, Jr., Esquire  
Gallagher, Evelius and Jones  
400 Park Charles  
218 North Charles Street  
Baltimore, MD 21201

RE: Item No.: 379  
Case No.: 97-379-SPH  
Petitioner: Cardinal W. H. Keeler

Dear Mr. Biddison:

The Zoning Advisory Committee (ZAC), which consists of representatives from Baltimore County approval agencies, has reviewed the plans submitted with the above referenced petition, which was accepted for processing by Permits and Development Management (PDM), Zoning Review, on March 10, 1997.

Any comments submitted thus far from the members of ZAC that offer or request information on your petition are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. Only those comments that are informative will be forwarded to you; those that are not informative will be placed in the permanent case file.

If you need further information or have any questions regarding these comments, please do not hesitate to contact the commenting agency or Roslyn Eubanks in the zoning office (887-3391).

Sincerely,

A handwritten signature in dark ink, appearing to read "W. Carl Richards, Jr.", is written over a faint, larger version of the same signature.

W. Carl Richards, Jr.  
Zoning Supervisor

WCR/re  
Attachment(s)



BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director  
Department of Permits and Development Management

DATE: April 4, 1997

FROM: Arnold F. 'Pat' Keller, III, Director  
Office of Planning

SUBJECT: 101 Church Lane

INFORMATION:

Item Number: 379  
Petitioner: Cardinal William H. Keeler  
Property Size:  
Zoning: ML-IM  
Requested Action: Special Hearing  
Hearing Date: / /

SUMMARY OF RECOMMENDATIONS:

The next meeting of the Landmarks Preservation Commission will be held on April 10, 1997. If necessary, comments will be provided to the Zoning Commissioner after the meeting has been held.

Prepared by: Jeffrey M. Long

Division Chief: Gary L. Keller

AFK/JL:rdn



**Maryland Department of Transportation**  
**State Highway Administration**

David L. Winstead  
Secretary  
Parker F. Williams  
Administrator

Ms. Roslyn Eubanks  
Baltimore County Office of  
Permits and Development Management  
County Office Building, Room 109  
Towson, Maryland 21204

RE: Baltimore County 3-21-97  
Item No. 379 JLL

Dear Ms. Eubanks:

This office has reviewed the referenced item and we have no objection to approval as it does not access a State roadway and is not affected by any State Highway Administration projects.

Please contact Larry Gredlein at 410-545-5606 if you have any questions.

Thank you for the opportunity to review this item.

Very truly yours,

*P. J. Gredlein*  
for Ronald Burns, Chief  
Engineering Access Permits  
Division

LG

My telephone number is \_\_\_\_\_

Maryland Relay Service for Impaired Hearing or Speech  
1-800-735-2258 Statewide Toll Free

Mailing Address: P.O. Box 717 • Baltimore, MD 21203-0717  
Street Address: 707 North Calvert Street • Baltimore, Maryland 21202

BALTIMORE COUNTY, MARYLAND  
DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT  
INTER-OFFICE CORRESPONDENCE

TO: PDM

DATE: 3/25/97

FROM: R. Bruce Seeley.  
Permits and Development Review  
DEPRM

SUBJECT: Zoning Advisory Committee  
Meeting Date: March 24, 97

The Department of Environmental Protection & Resource Management has no comments for the following Zoning Advisory Committee Items:

Item #'s:

379

388

381

389

382

390

383

393

385

394

387

RBS:sp

BRUCE2/DEPRM/TXTSBP



B A L T I M O R E   C O U N T Y,   M A R Y L A N D

I N T E R O F F I C E   C O R R E S P O N D E N C E

TO:            Arnold Jablon, Director  
              Department of Permits & Development  
              Management

Date:   March 31, 1997

FROM: *RWB* Robert W. Bowling, Chief  
              Development Plans Review Division

SUBJECT:   Zoning Advisory Committee Meeting  
              for March 31, 1997  
              Item Nos. 378, 379, 380, 381, 382, 383, 384, 385, 386, 387 & 391

              The Development Plans Review Division has reviewed the subject  
zoning item, and we have no comments.

RWB:HJO:cab

cc:   File

ZONE331.NOC

Baltimore County Government  
Fire Department



700 East Joppa Road Suite 901  
Towson, MD 21286-5500

(410) 887-4500

March 31, 1997

Arnold Jablon, Director  
Zoning Administration and Development Management  
Baltimore County Office Building  
Towson, MD 21204  
MAIL STOP-1105

RE: Property Owner: Cardinal William H. Keeler, Roman Catholic  
Archbishop of Baltimore, a Corporation Sole

Location: DISTRIBUTION MELTING OF March 24, 1997

Item No.: 379 Zoning Agenda:

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

1. Fire hydrants for the referenced property are required and shall be located at proper intervals, along an approved road in accordance with Baltimore County Standard Design Manual Sec. 2.4.4 Fire Hydrants, as published by the Department of Public Works.
4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.
5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1991 edition prior to occupancy.

REVIEWER: LT. ROBERT F. SAUERWALD

Fire Marshal Office, PHONE 867-4881, MS-1102F

cc: File



# PETITION PROBLEMS

q7-379 sph

## #378 --- MJK

1. Sign form is incomplete/incorrect.

## #379 --- JLL

1. Sign form is incomplete/incorrect.

## #380 --- RT

1. Folder says zoning is D.R.-3.5; petition says zoning is D.R.-5.5 -- Which is correct?

## #382 --- CAM

1. Need printed or typed title and authorization of person signing for legal owner.
2. Need printed name and title and authorization of person signing for contract purchaser.
3. No review information on bottom of petition form.

## #385 --- MJK

1. Sign form is incomplete/incorrect.
2. No description on folder.
3. No zoning on folder.
4. No acreage on folder.
5. No election district on folder.
6. No councilmanic district on folder.
7. Plan is illegible.

RE: PETITION FOR SPECIAL HEARING \*  
101 Church Lane, S/S Church Lane, 1379'+/-  
W of York Rd (St. Joseph Church & School) \*

BEFORE THE  
ZONING COMMISSIONER  
OF BALTIMORE COUNTY  
CASE NO. 97-379-SPH

Cardinal William H. Keeler, Roman \*  
Catholic Archbishop, a Corporation Sole \*  
Petitioner \*

\* \* \* \* \*

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order.

Peter Max Zimmerman  
PETER MAX ZIMMERMAN  
People's Counsel for Baltimore County

Carole S. Demilio  
CAROLE S. DEMILIO  
Deputy People's Counsel  
Room 47, Courthouse  
400 Washington Avenue  
Towson, MD 21204  
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25<sup>th</sup> day of April, 1997, a copy of the foregoing Entry of Appearance was mailed to Thomas N. Biddison, Jr., Esq., Gallagher, Evelius & Jones, 218 N. Charles Street, Suite 400, Baltimore, MD 21201, attorney for Petitioners.

Peter Max Zimmerman  
PETER MAX ZIMMERMAN

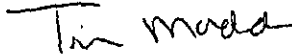
The proposed 100 square foot Parish multipurpose center will greatly enhance the ability of the parish to provide additional public benefits to the county.

Mr. Arnold Jablon  
June 18, 1997  
Page 2

We feel that Section 407 does apply to this project and that a waiver should be granted by the county. We hereby request your review of this issue.

We await your response.

Very Truly Yours,  
MORRIS & RITCHIE ASSOCIATES, INC.



Timothy F. Madden, ASLA, AICP  
Principal

enclosures

cc: Msgr. Paul Cook

Speed  
Letter

In the interest of speed and economy, we are replying to your letter with marginal notes. If you need more information, do not hesitate to call or write. Thank you for your interest.



June 30, 1997

8th Election District

Dear Mr. Madden:

Please be advised that the Department of Permits and Development Management, Bureau of Zoning Review, acknowledges that the subject use is permitted within the M.L. zone pursuant to Section 407 of the Baltimore County Zoning Regulations.

This office cannot grant a waiver from the development regulations as this must be accomplished by the Development Review Committee (DRC).

On February 10, 1997 the possible exemption was tabled at the applicant's request. You must contact Mr. Don Rascoe, Development Manager at 410-887-3353 and request that this item be placed on the next possible agenda.

Very truly yours,



Mitchell J. Kellman  
Planner II  
Zoning Review

MJK:rye

c: zoning case 97-379-SPH

RICHARD O. BERNDT  
THOMAS N. BIDDISON, JR.  
ROBERT R. KERN, JR.  
SAUL E. GILSTEIN  
THOMAS B. LEWIS  
BONNIE A. TRAVIESO  
STEPHEN A. GOLDBERG  
LINDA H. JONES  
JACK C. TRANTER  
CHRISTOPHER J. FRITZ  
DAVID E. RADERMAN  
PETER E. KEITH  
NITA L. SCHULTZ  
MICHAEL W. SKOJEC  
KATHRYN KELLEY HOSKINS  
MARK P. KEENER  
KEVIN J. DAVIDSON  
EILEEN M. LUNGA  
LORI A. NICOLLE  
KENNETH S. GROSS  
THOMAS C. DAME  
MARY KAY GAVER  
JULIE ELLEN SQUIRE  
MATTHEW W. OAKLEY  
PAULA B. GRANT  
REBECCA A. WEAVER  
MICHAEL J. HENIGAN  
DAVID W. KINKOPF  
LATONYA B. DARGAN

LAW OFFICES

**GALLAGHER, EVELIUS & JONES**

PARK CHARLES  
SUITE 400  
218 NORTH CHARLES STREET  
BALTIMORE, MD 21201

TELEPHONE (410) 727-7702  
TELECOPIER (410) 837-3078  
TELECOPIER (410) 837-3085

WRITER'S DIRECT DIAL: (410) 347-1344

April 7, 1997

97-579 sph

Office of Zoning Administration &  
Development Management  
401 Bosley Avenue  
Second Floor  
Court House  
Towson, Maryland 21204

Re: St. Joseph, Texas Parish  
101 Church Lane  
Cockeysville, MD 21030

Dear Sir/Madam:

Enclosed please find for filing Petitioner's Memorandum of Law in connection with the above matter.

If you have any questions, please contact me. Thank you for your assistance.

Very truly yours,

*Thomas N. Biddison, Jr.*

Thomas N. Biddison, Jr.

TNBJR/jeg

Encl.

cc: Rev. Msgr. Paul G. Cook (w/encl.)

5150TNB.jeg  
#100-53

IN THE MATTER OF THE  
PETITION FOR SPECIAL HEARING  
TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY  
FOR THE PROPERTY LOCATED AT  
101 CHURCH LANE, COCKEYSVILLE, MD 21030

\* \* \* \* \*

MEMORANDUM OF LAW

This matter comes before the Zoning Hearing Office as part of the development review process because the plans for the new construction of the St. Joseph's Texas Church complex envision demolishing an unused building, previously used as a residence, which is located exactly at the planned location of the multi-purpose building which will service both the Church and the School, and which must be located so that it is directly accessible to both to optimize the effectiveness of its use.

Section 26-278 provides that in a development plan, historic structures identified on the Maryland Historical Trust Inventory of Historic Properties must be preserved. This is so, even though the State law allowing for the designation of historic properties provides no protection for those properties.

The stringent provisions of Section 26-278 are greatly ameliorated by waiver provisions in the law allowing for such a requirement, as imposed by Section 26-278, to be waived if, among other reasons, compliance "would cause unnecessary hardship." Section 26-172(a)(2).

The facts are that the residence is of no further use to the Church, is deteriorating, and is located in the exact place which has been identified as the optimum location for a multi-purpose center, directly accessible through internal connections with both

the Church and the School. The location of the new building at this place is integral to the planning process to achieve the optimum benefit of the new improvements in achieving the Church's mission, as is more fully spelled out in the Affidavit of the Pastor, Msgr. Paul Cook (attached hereto)

We are hopeful that the Church will receive the necessary approvals to proceed forward with the demolition of the residence in this waiver process. We also feel it important to alert the hearing officer and the governmental agencies involved of arguments which would act to allow the project to move forward, irrespective of what requirements were imposed by governmental authorities regarding demolishing of the residence.

Very simply, the implementation of the capital improvement project at issue is integral to carrying out the religious mission of the St. Joseph's parish. Location of the improvements in such a way as to optimize their utility is likewise integral to that mission.

The law applying to this state of affairs is set forth in the Memorandum of Law filed in the case of Keeler v. Mayor and City Council of Cumberland, et al., 940 F.Supp. 879, and in the opinion of Judge Smalkin, (both attached hereto).

Very simply, the law is that when governmental regulation is involved which would require a Church to maintain a non-functional allegedly historic building which is so located as to interfere with new construction of physical facilities intended to be used in furtherance of the mission of the Church, such regulation interferes with the First Amendment rights of the Church and is,



therefore, invalid.

The ruling in Keeler v. Cumberland was based directly on the First Amendment of the Constitution. Infringement on the Church's religious mission is also protected by the federal Religious Freedom Restoration Act. 42 U.S.C. § 2000bb et seq. Preventing the Church from fulfilling its mission through its demolition and construction plans would violate this federal statute in addition to the constitutional principles discussed in the Keeler opinion.

We submit that if the hearing officer does not feel justified in granting the waiver on statutory grounds, that such action as will clear the way for demolition is constitutionally mandated, and the hearing office should pass an order, to this effect, allowing for the demolition of the convent in the process of proceeding with the new construction.

We trust that this matter will not take the course of the Cumberland monastery matter and compel us to go to Federal Court, at the County's expense, to establish once again what the Church's constitutional rights are, in this respect.

Respectfully submitted,



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IN THE MATTER OF THE  
PETITION FOR SPECIAL HEARING  
TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY  
FOR THE PROPERTY LOCATED AT  
101 CHURCH LANE, COCKEYSVILLE, MD 21030

\* \* \* \* \*

AFFIDAVIT OF MSGR. PAUL G. COOK

I, Msgr. Paul G. Cook, solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of the following paper are true:

1. I am at least 21 years of age and I am competent to testify to the matters stated herein.

2. I have been a priest in the Archdiocese of Baltimore since my ordination in 1959. I have been the pastor of St. Joseph's, Texas since 1977.

3. The legal owner of the land and building of St. Joseph's is Cardinal William H. Keeler, Roman Catholic Archbishop of Baltimore, and his successors, a corporation sole.

4. The corporation sole holds the property for the benefit of the separately incorporated St. Joseph's Parish. Under the canon law of the Catholic Church, the Parish is responsible for its own operations under the oversight of the Archdiocese.

5. Our Parish entered into a long-term plan three years ago for capital improvements to the Church and school. The Parish was faced with physical plant demands, and that required attention in order to meet the religious and liturgical needs of the Parish. These needs include a multi-purpose center to meet the needs of the Church and its Parish school. The education provided by the Parish school is a critical component of the religious mission of the

Church.

6. The proposed multi-purpose center will include a cafeteria, gym, and an auditorium/social hall for school, church and community meetings. It also will include school classrooms, a library and computer center for the school, and administrative offices.

7. After an extensive study by the Parish and design professionals which it retained, it was determined that the only place on the Parish grounds that would be suitable for the erection of the new building was where a residence is presently located. That residence had previously been utilized for Parish needs, but was last occupied in October 1996 and is of no further use to the Parish.

8. Besides being integral to carrying forward the mission of the Parish school by providing for a new physical facility, which will allow the school to better carry out its mission, the proposed construction plans are based on the religious obligation to provide opportunities for and encourage participation in all sorts of group activity by parishioners in furtherance of religious interests. The new facility will provide space for retreats and prayer group meetings. Retreats and prayer groups are important religious services that meet the need of all faithful to continuously renew their faith through prayer, reflection and worship. This space will also allow gatherings before and after Masses. For example, friends and families of parishioners should have the opportunity to gather after funeral Masses, Masses celebrating a child's first

reception of the Holy Eucharist, and celebrations of the sacrament of Confirmation. However, there is currently no opportunity for them to do so connected with the Church building. These activities are worship services in their own right and also improve the spirituality of the Masses in the Church.

9. Currently, the Parish has no such appropriate gathering spaces, and such spaces must be connected to the Church and school building in order to provide such coherence, continuity, and accessibility as is necessary to serve the religious needs of the Parish.

10. The proposed construction plans are based on Catholic beliefs, rights and duties regarding education, ministry and associates among the faithful of the Parish. The new multi-purpose center will allow the Parish to expand its religious programs. It will also allow the Parish to further its larger mission in the community of supporting worthwhile programs such as A.A., Girl Scouts, Red Cross Blood Drives, etc. by providing a more functional meeting place.

11. All of these worship activities would be absolutely prohibited by the County's actions should it prevent the demolition of the residence and the construction, on its site, of the facilities necessary to meet the spiritual needs of the Parish.

12. The proposed construction will foster associations among the adults of our Parish to work for the continued renewal of our Parish through religious ministries and other parish projects. These types of associations are critical to meeting the Parish

Mission to "Bring individuals of our parish together as a spiritually active parish community," and to "Call upon all members of our parish to use their God-given talents to proclaim and to bear witness to Jesus and His Gospel message." These associations are guaranteed to the faithful by Canon Law and such lay involvement in Parish governance has been actively encouraged by Church teaching, particularly after the Second Vatican Council.

13. St. Joseph's Parish currently does not have adequate facilities for such ministries and associations, and such facilities must be connected to the Church building in order to provide coherence, continuity and accessibility to the other activities of the Parish.

14. The construction plans have religious and symbolic meaning to the Parish. The Parish and I have a religious obligation to use our resources, including property and buildings, to express a proper religious message to the Parish and the entire Cockeysville-Texas communities.

15. The residence which must be demolished is currently an abandoned old residence building that serves no purpose for the life and future of today's Parish community. The Parish, through the demolition of the residence, will communicate to the community and especially to the youth of the Parish that the Parish exists to meet the spiritual needs of today's faithful.

16. The demolition expresses commitment, revitalization, openness and inclusivity. These themes are also emphasized in other aspects of the construction plans since handicap

accessibility and full family participation are embraced in the plans.

17. As a religious entity, the Parish believes its property should express an appropriate religious message, as determined by the Parish. Any thwarting of the Parish plans precluding the demolition of the residence would usurp the use of St. Joseph's buildings in order to express a different message than the religious message sought to be expressed by the Church. Any attempt to dictate the message is a loss to our Parish by thwarting our plans. Requiring the retention of the residence is a substantial burden on our religious exercise of determining the appropriate use and symbolism for our own property.

I HEREBY declare and affirm under the penalties of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

  
\_\_\_\_\_  
Msgr. Paul G. Cook

5146TNB.jeg  
#100-53

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
(Northern Division)

Aug 5 1996

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Case No.: S-96-167

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CARDINAL WILLIAM H. KEELER,  
ROMAN CATHOLIC ARCHBISHOP OF BALTIMORE,  
AND HIS SUCCESSORS, A CORPORATION SOLE, et al.

Plaintiffs

v.

MAYOR AND CITY COUNCIL OF CUMBERLAND, et al.

Defendants

---

MEMORANDUM IN SUPPORT OF PLAINTIFFS'  
MOTION FOR PARTIAL SUMMARY JUDGMENT

---

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
(Northern Division)

CARDINAL WILLIAM H. KEELER, ROMAN \*  
CATHOLIC ARCHBISHOP OF BALTIMORE, \*  
AND HIS SUCCESSORS, \*  
A CORPORATION SOLE, \*

et al., \*

Plaintiffs \*

Case No.: S-96-167

v. \*

MAYOR AND CITY COUNCIL OF \*  
CUMBERLAND, \*

et al., \*

Defendants \*

\* \* \* \* \*

MEMORANDUM IN SUPPORT OF PLAINTIFFS'  
MOTION FOR PARTIAL SUMMARY JUDGMENT

Cardinal William H. Keeler, Roman Catholic Archbishop of Baltimore, and his successors, a corporation sole (hereinafter also referred to as the "Archdiocese") and St. Peter and Paul's Roman Catholic Congregation, Inc. (hereinafter "Sts. Peter and Paul" or the "Parish"), by and through counsel, submit this Memorandum In Support Of Plaintiffs' Motion For Partial Summary Judgment.

INTRODUCTION

Plaintiffs own a dilapidated Monastery located on their property in Cumberland, Maryland. After careful deliberation and consideration of their religious and financial obligations, Plaintiffs decided to demolish the Monastery building in order to meet the religious needs of

the Sts. Peter and Paul Parish community. This decision was based on the Parish's current and future religious needs, and the lack of a use for the Monastery that promotes the mission of the Church or that is economically feasible. Defendants, government entities, have admitted that there is no economically feasible way to preserve the Monastery and have also recognized the religious needs of the Parish. Yet Defendants refuse to allow Plaintiffs to demolish their own Monastery.

Defendants' refusal to allow the Parish to meet the religious needs of the Parish through the alteration of church property violates the religious freedom guaranteed by both the U.S. and Maryland Constitutions. Defendants' actions also violate the constitutional prohibition against the taking of private property, because Defendants admit that their actions leave Plaintiffs with no economically feasible use for the Monastery. Further, once Defendants concluded that there was no economically feasible plan to preserve the Monastery, they were required by the state enabling statute to grant Plaintiffs' application. Thus, the historic preservation ordinance of Defendant Mayor and City Council of Cumberland (the "City") and the rejection of Plaintiffs' demolition application by Defendant Cumberland Historic Preservation Commission (the "Commission") violate state law.

Because the material facts in this case are undisputed and Plaintiffs merit judgment as a matter of law, Plaintiffs now move for summary judgment as to Count II (violation of the Free Exercise Clause of the U.S. Constitution), Count III (violation of the Maryland Constitution's religious freedom clause), Count VI (unconstitutional

taking of private property under the U.S. Constitution), and Count IX (violation of state law).

#### STATEMENT OF FACTS

Cardinal William H. Keeler, Roman Catholic Archbishop of Baltimore, and his successors, a corporation sole, is the legal owner of the Sts. Peter and Paul Monastery that is at issue in this case. Ex. 1, Msgr. Schleupner Aff. ¶ 5. In this Memorandum, the term "Monastery" will be used to refer to the abandoned Monastery, Chapel, and connecting corridor sometimes referred to as the "White Elephant," that Plaintiffs own and now seek to demolish. That property is held for the beneficial use of the Parish which, under the canon law of the Catholic Church, administers its own affairs under the authority of the Archdiocese. Id. Rev. Vance Pastorius, O.F.M. Cap., is the pastor of the Sts. Peter and Paul Parish, which is located in Cumberland, Maryland, within the Archdiocese of Baltimore. Id.

Construction on the Monastery at issue, which is connected to the Parish's Church building, was begun in approximately 1852. Ex. 2, Fr. Pastorius Aff. ¶ 4. Now in a dilapidated state, see photographs Attached to Ex. 2, the Monastery serves no beneficial purpose for the Parish. Simply to maintain the shell of the building would cost the Parish hundreds of thousands of dollars with no benefit in return. Id. at ¶ 6. Over ten years ago, in January 1986, the remaining five friars in the building moved out. Id. at ¶ 4. The Monastery has not been used since that time, with the exception of a single unheated restroom and small

vesting room that continue to be used in connection with religious services in the Church. Id. In contrast, the adjoining Church building continues to be used every day for religious services. Id.

For years, the Archdiocese and the Parish have attempted to find a feasible alternative use for the Monastery that would promote the religious mission of the Parish and the Archdiocese. Ex. 1, Msgr. Schleupner Aff. ¶ 6; Ex. 2, Fr. Pastorius Aff. ¶¶ 4-5. Indeed, in 1988 the then-Mayor of Cumberland asked then-Archbishop Borders of Baltimore for an "11th-hour look at saving the Monastery," a request that was granted. Ex. 1, Msgr. Schleupner Aff. ¶ 6, and attachment. Ultimately, the Archdiocese and the Parish decided that the Monastery should be demolished since no alternative plan could be conceived that promoted the mission of the Church or was economically feasible. The Plaintiffs' decision to demolish the Monastery was compelled by the religious needs of the Parish community, including the need to construct a Church Annex to improve worship services and other ministries of the Parish and to add a courtyard, gardens and parking connected to the Church. Ex. 1, Msgr. Schleupner Aff. ¶ 7; Ex. 2, Fr. Pastorius Aff. ¶ 7-9. Demolition of the Monastery is essential to the Parish's plans to improve worship, retreats and other religious activities, to make the Church building accessible to individuals in the Parish who have handicaps, and to make a religious statement through the use of their property.

The Parish developed a three-phase construction plan that included, as an essential part of phase one, the demolition of the Monastery. Ex. 2, Fr. Pastorius Aff. ¶ 9. The first phase also involves restoration of



the Church building, construction of retaining walls, and replacement of the school heating system. The second phase involves the construction of a Church Annex, with an added Church entrance and access to the courtyard and gardens. The Church Annex will contain a room for the reception of the sacrament of reconciliation, a meeting room and kitchen to be used for a variety of religious purposes, a nursery designed for the care of young children, two handicapped-accessible restrooms, a direct entrance to the Church and to the courtyard and gardens, and stained glass that will be removed from the old Monastery Chapel. See Attachment D (Photo D-5) to Ex. 2. The third phase will install parking facilities and pave other areas of the Parish property. The three-phase plan developed by the Parish and the Archdiocese is motivated by religious belief. E.g., Ex. 3, Cardinal Keeler Aff. at ¶¶ 3-4.

Support in the Parish for the three-phase plan was overwhelming. For example, eighty-four percent (84%) of the parishioners responding to a survey indicated support for the three-phase plan. Ex. 2, Fr. Pastorius Aff. at ¶ 10. Eighty-nine percent (89%) of the respondents felt that the three-phase project was important to the life of the Parish. Id.

Under the historic preservation ordinance of the City of Cumberland, Plaintiffs were required to receive a Certificate of Appropriateness from the City's Historic Preservation Commission before demolishing the Monastery. Ex. 12, Ordinance No. 2970, Section Z.6.a. On August 14, 1995, the Archdiocese and Parish applied for such a certificate. Ex. 2, Fr. Pastorius Aff. ¶ 12. Plaintiffs detailed their

three-phase plan to the Commission and discussed the religious motivation for their actions. Id. at ¶ 13 and Attachment C thereto; Ex. 13, Commission Transcript, passim. The Commission recognized the basis for Plaintiffs' request, stating "We . . . are cognizant of the expressed needs of your parishioners for improved facilities." Attachment H to Ex. 2.

During the Commission proceeding on September 11, 1995, Plaintiffs demonstrated the lack of economically feasible alternative uses for the Monastery, the financial burden the continued maintenance of the Monastery presented, and other financial and pastoral needs of the Parish. See, e.g., Ex. 13 17-22, 29-34 (testimony of Msgr. Schleupner and Fr. Pastorius). Plaintiffs also specifically advised the Commission and the City Solicitor that the demolition was based upon the religious needs and goals of the Parish. E.g., Id. September 11, 1995 Transcript at 10-11, 19-22; Ex. 19, Letter from Plaintiffs' counsel to the Historic Preservation Commission dated December 12, 1995; Ex. 20, Letter from Plaintiffs' counsel to City Solicitor dated December 15, 1995.

The Commission found, on September 26, 1995, that "no economically feasible plan can be formulated for [the Monastery's] preservation." See Ex. 14, Stipulation and Agreement (signed by the Commission and by the City Solicitor of Cumberland). Defendants have admitted that the Commission made this finding. Defs.' Answers at page 3, ¶ 17 (admitting allegation of Compl. ¶ 31).

State law requires that, if the Commission makes such a finding, the parties will enter a 90-day negotiation period after which the

Commission must grant the application. See supra at 38-47. Nonetheless, relying upon an unlawful Cumberland Ordinance, the Commission denied the Certificate of Appropriateness on December 21, 1995, prohibiting Plaintiffs from demolishing their Monastery.

### ARGUMENT

#### I. Summary Judgment Standard

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c).

The affidavits and exhibits submitted in support of this Motion, as well as Defendants' Answers, demonstrate that there are no material facts in dispute as to Plaintiffs' claims under Counts II, III, VI, and IX, and that Plaintiffs are entitled to judgment as a matter of law on each of these counts. Defendants cannot dispute the religious basis of Plaintiffs' decision to demolish the Monastery and pursue its three-phase construction plan. In violation of the federal and state constitutional guarantees to freedom of religion, Defendants have not employed the least restrictive means of furthering their interest in historic preservation, a governmental interest which as a matter of law is not "compelling." Defendants have also admitted that there is no economically feasible plan for the preservation of the Monastery. Thus, their actions are an unconstitutional taking of property as a matter of law, and also violate state law.

## II. Defendants Have Violated Plaintiffs' Constitutional Rights To Religious Freedom

### A. Introduction

The Archdiocese of Baltimore and the Sts. Peter and Paul Parish have a religious obligation to place the spiritual needs of the faithful entrusted to their care above concern for the preservation of a dilapidated building. Plaintiffs have decided to demolish an abandoned, useless Monastery in order to construct facilities needed to improve the religious worship at the Parish. As the Liturgical Committee of the National Conference of Catholic Bishops has stated:

The historical problem of the church as a place attaining a dominance over the faith community need not be repeated as long as Christians respect the primacy of the living assembly.

Ex. 1, Msgr. Schleupner Aff. ¶ 21 (quoting Environment and Art in Catholic Worship).

Based on their religious beliefs regarding worship, ministry, education, association, and expression, Plaintiffs wish to demolish their Monastery. Ex. 3, Cardinal Keeler Aff. ¶ 4; Ex. 1, Msgr. Schleupner Aff. passim; Ex. 2, Fr. Pastorius Aff. passim. The demolition of the Monastery is an essential part of the Parish's three-phase construction plan that is specifically designed to meet the religious needs of the Parish through the construction of worship and other related facilities. Ex. 3, Cardinal Keeler Aff. ¶ 3; Ex. 1, Msgr. Schleupner Aff. ¶ 7; Ex. 2, Fr. Pastorius Aff. ¶¶ 8, 9. Demolition of the Monastery is the cornerstone of the Parish's plans to improve

worship at the Parish, to increase accessibility to worship and other religious services for handicapped, elderly and other parishioners, and to use its property as an expression of religious belief. Ex. 1, Msgr. Schleupner Aff. passim; Ex. 2, Fr. Pastorius Aff. passim.

Defendants have denied Plaintiffs' request for a Certificate of Appropriateness to demolish the Monastery, and thus are absolutely prohibiting Plaintiffs from engaging in activities motivated by their sincerely held religious beliefs. Ex. 1, Msgr. Schleupner Aff. ¶ 25; Ex. 2, Fr. Pastorius Aff. ¶ 36. These actions by Defendants substantially burden the exercise of religion by preventing the Parish and Archdiocese from meeting the religious needs of the Parish. See, e.g., Ex. 3, Cardinal Keeler Aff. ¶ 4.

Both the United States and Maryland Constitutions prohibit such infringements on religious liberty and practice. Under both constitutions, Plaintiffs are entitled to judgment as a matter of law, because Defendants are substantially burdening Plaintiffs' religious exercise without using the least restrictive means to achieve a compelling interest. The "compelling interest" test is the appropriate standard of review for Plaintiffs' claims under both the United States and Maryland Constitutions, and as a matter of law Defendants' actions do not satisfy such strict scrutiny.<sup>1</sup>

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<sup>1</sup>This Court, in its Memorandum Opinion and Order dated June 10, 1996, dismissed Plaintiffs' Count I brought under the Religious Freedom Restoration Act, a statute that attempts to codify the compelling interest standard for all religious freedom claims. However, the Court ruled that Plaintiffs stated claims under both the U.S. and Maryland Constitutions for violations of religious

## B. Legal Standards

### 1. The United States Constitution

The First Amendment to the United States Constitution requires that "Congress shall make no law . . . prohibiting the free exercise [of religion]." The First Amendment is applicable to state and local governments through incorporation into the Fourteenth Amendment. See, e.g., Cantwell v. Connecticut, 310 U.S. 296, 303 (1940). The standard for evaluating certain classes of free exercise claims under the First Amendment has been that the government may not place a substantial burden on a person's exercise of religion unless the government has a compelling interest and employs the least restrictive means of achieving that interest. E.g., Wisconsin v. Yoder, 406 U.S. 205 (1972); Sherbert v. Verner, 374 U.S. 398, 402-403 (1963).

In 1990, the United States Supreme Court in Employment Div., Dep't of Human Resources of Oregon v. Smith, 494 U.S. 872 (1990) (Smith II), clarified the classes of free exercise claims in which the application of the "compelling interest" standard is appropriate. Smith II stated that the compelling interest standard does apply to laws that are not "neutral" and "generally applicable," or to other state actions that might indicate an intention to interfere with religion. Smith II, 494 U.S. at 884; Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520, 531-32 (1993). Further, Smith II ruled that the

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freedom rights, and recognized at page 11 and n.3 that Smith II's limitation on the use of the compelling interest test did not reach to laws that were not neutral and generally applicable nor to claims that involve multiple constitutional values.

compelling interest standard also applies to even neutral laws of general applicability if the religiously motivated conduct also implicates another constitutional value such as freedom of speech or association, i.e. a "hybrid" claim. Smith II, 494 U.S. at 881. Here, both categories described in Smith II apply. The compelling interest standard applies (1) because the City's laws are not neutral and generally applicable, and (2) because Plaintiffs' desire to demolish their dilapidated Monastery implicates the constitutional protections afforded to free speech, assembly, and association.

In a case very similar to this one, the Washington Supreme Court applied Smith II and granted judgment in favor of the plaintiff church under the First Amendment because the historic preservation ordinance in that case was not neutral or generally applicable, and because the church had raised a "hybrid" claim of free exercise and free speech. First Covenant Church v. City of Seattle, 840 P.2d 174 (Wash. 1992). First Covenant Church challenged the mere designation of its church as subject to the historic preservation ordinance, and the court struck down the ordinance as violative of the First Amendment after fully considering Smith II. First Covenant Church, 840 P.2d at 189. The Supreme Court of Washington recently reinforced its ruling that historic landmark ordinances violate the Free Exercise Clause of the U.S. Constitution because they are not "neutral and generally applicable," and because proposals of church construction present "hybrid" claims. First United Methodist Church v. Hearing Examiner for Seattle Landmarks Preservation Bd., 916 P.2d 374 (Wash. 1996).

Here, Plaintiffs' exercise of religion has been burdened in a much more significant way than in First Covenant Church. Defendants have not only subjected Plaintiffs to the entangling regime of the preservation ordinance through mere designation of Plaintiffs' property, but have actually applied the preservation ordinance to prevent Plaintiffs from meeting the pastoral needs of the Parish.

a. The City's laws are not neutral and generally applicable

Under the Free Exercise Clause of the U.S. Constitution, a law that is not neutral and of general applicability "must be justified by a compelling government interest and must be narrowly tailored to advance that interest." Church of the Lukumi Babalu Aye, 508 U.S. 520, 531-32.

The City's Ordinance that included Sts. Peter & Paul's property in the historic district, Ordinance No. 2836, is not neutral and generally applicable. According to Defendants' own Memorandum in Support of their Motion to Dismiss, the Ordinance creating Cumberland's historic district defined the district as including properties along Washington Street, properties on a number of squares connected to Washington Street, and "all of the properties included in the site of Sts. Peter and Paul Roman Catholic Church, School, Monastery, Chapel, School Hall and Convent." Defs.' Mem. Supp. Mot. Dis. at 6 (quoting Ordinance No. 2836). The property at Sts. Peter & Paul Parish is not bounded by Washington Street, but by Fayette, Johnson, Cumberland and Smallwood streets. Defs.' Mem. Supp. Mot. Dis. at 1. Thus, one particular church -- Plaintiffs' -- was specifically singled out for inclusion through the



ordinance. The property of Sts. Peter & Paul Parish was singled out, by name, for inclusion in a historic district that otherwise would not have included it, and that did not include similarly situated properties based on neutral criteria.

On its face, Ordinance No. 2836 is not neutral and generally applicable, but rather makes specific reference to the religious buildings of Plaintiffs. As the Supreme Court has noted, the government may not "impose[] special disabilities on the basis of . . . religious status." Church of the Lukumi Babalu Aye, 508 U.S. at 533 (quoting Smith II, 494 U.S. at 877).

Further, the Historic District Regulations contained in Ordinance No. 2970, Ex. 12, are not "generally applicable" because they require a highly individualized and entangling determination of the use of Plaintiffs' property. In Smith II, the Supreme Court contrasted "generally applicable" criminal laws with statutes that contain "a system of individualized exceptions," that "create[] a mechanism for individualized exemptions," or that lend themselves to "individualized governmental assessment of the reasons for the relevant conduct." Smith II, at 884.

Ordinance No. 2970 is precisely the type of law filled with individualized assessments that requires strict scrutiny and application of the compelling interest standard under Smith II. Smith II recognized that the Free Exercise Clause prevents the denial of unemployment compensation to religious adherents because statutes regulating unemployment compensation create a "mechanism for individualized

exemptions." Id. (citing Sherbert, supra). The Supreme Court recognized that closer review must be given to such laws containing individualized exemptions. Cumberland's historic preservation ordinance, like the statute in Sherbert, operates exactly as a "mechanism for individualized exemptions," allowing approval of the Certificate of Appropriateness on three separate grounds based on the specific facts of each case and claimant, i.e. if the structure to be altered is "a deterrent to a major improvement program which will be of substantial benefit to the City of Cumberland"; if "[r]etention of the structure would cause undue financial hardship to the owner"; or if "retention of the structure would not be to the best interest of a majority of persons in the community." Ex. 12, Ordinance No. 2970 at 7.d. On its face, the Ordinance requires "individualized governmental assessment" of each property owner's application.

It is hard to imagine a law requiring more of an "individualized assessment" than the ordinance in question. "[W]here the State has in place a system of individual exemptions, it may not refuse to extend that system to cases of 'religious hardship' without compelling reason." Smith II, 494 U.S. at 884 (emphasis supplied). Applying the Supreme Court's holdings in Church of the Lukumi Babalu Aye, Smith II, and Sherbert, this court must apply the compelling interest test to Defendants' actions.

b. Plaintiffs have proven a "hybrid" claim under Smith II

The Supreme Court in Smith II also ruled that "the First Amendment bars application of a neutral, generally applicable law to religiously motivated action" when the religiously motivated action also involves "other constitutional protections, such as freedom of speech." Smith II, 494 U.S. at 881 (emphasis added). See also E.E.O.C. v. Catholic University, 83 F.3d 455, 467 (D.C. Cir. 1996) (finding a violation of the Free Exercise Clause based on the "'hybrid situation' referred to in Smith"); this Court's Memorandum Opinion and Order dated June 10, 1996 at 11 n.3 In the words of the Fifth Circuit, "Smith specifically excepts religion-plus-speech cases from the sweep of its holding." Society of Separationists, Inc. v. Herman, 939 F.2d 1207, 1216 (5th Cir. 1991), superseded en banc on other grounds (standing), 959 F.2d 1283 (1992). In its discussion of these "hybrid" free exercise-free speech cases, the Supreme Court prophesied exactly this type of case:

[I]t is easy to envision a case in which a challenge on freedom of association grounds would be likewise reinforced by Free Exercise Clause concerns. Cf. Roberts v. United States Jaycees, 468 U.S. 609, 612 (1984) ("An individual's freedom to speak, to worship, and to petition the government for the redress of grievances could not be vigorously protected from interference by the State [if] no correlative freedom to engage in group effort toward those ends were not also guaranteed.").

Smith II, 494 U.S. at 882.

Here, through the affidavits filed in support of this Motion, Plaintiffs have proven their "hybrid" claim justifying the application of the strict scrutiny/compelling interest standard for three reasons.

First, as discussed infra at 36-38, Plaintiffs' religiously motivated actions involve their constitutional property rights and implicate the takings clause of the U.S. Constitution. Second, Plaintiffs' religiously motivated actions involve free speech concerns based on the impact that the Defendants' denial has on the church members' ability to associate for religious and other purposes. See infra at 30-32. The "freedom to engage in association" is an "inseparable aspect" of freedom of speech. National Ass'n for the Advancement of Colored People v. Alabama, 357 U.S. 449, 460 (1958).

Third, Plaintiffs' three-phase construction plan, including demolition of the Monastery, is a matter of religious expression that directly implicates free speech concerns. The use of church property for religious expression is well-recognized. See e.g., Kedroff v. Saint Nicholas Cathedral, 344 U.S. 94, 121 (1952) (cathedral building is "the outward symbol of a religious faith") (Frankfurter, J., concurring). In analyzing restrictions in a historic preservation ordinance, the court in First Covenant noted that a church building "itself 'is an expression of Christian belief and message' and that conveying religious beliefs is part of the building's function." 840 P.2d at 182. See also County of Allegheny v. American Civil Liberties Union, 492 U.S. 573 (1989) (creche communicates religious meaning); West Virginia State Bd. of Educ. v. Barnette, 319 U.S. 624, 632 (1943) (explaining use of symbolism as means to communicate ideas).

The American Catholic Bishops have discussed the expressive element of the use of church property. Paragraph No. 38 of the Bishops' Environment and Art in Catholic Worship states that the Church:

has a commitment to be sign, witness, and instrument of the reign of God. That commitment must be reflected and implemented not only in the individual lives of its members but also in the community's choices and in its use of its money, property and other resources.

Ex. 1, Msgr. Schleupner Aff. ¶ 19. The proposed construction plans for the Parish reflect and implement this religious commitment. Id.

Monsignor Schleupner, who is Secretary of the Department of Management Services for the Archdiocese of Baltimore and has been involved in the decision to demolish the Monastery, explains the deeply religious basis for the message sought to be conveyed through the Parish's construction plans in this case:

Among the most central themes of the Catholic religion are incarnation and sacrament. The former refers to the doctrine that God became man in the person of Jesus and therefore all of creation and all of human life and activity have the potential for holiness. It is the mission of the Church to work for this transformation of the world into "the reign of God." This is to be done in and through the life and work of believers, and a fortiori in the praying, teaching, and serving activity of the Church. Similarly, sacramentality is that quality by which the Church, in its concrete this-worldly expression (in buildings, property, and programs) must point to higher values and transcendent realities. To be denied the capacity of making the concrete, practical choices that will most appropriately reflect the community's discernment of God's will is to be substantially burdened in the free exercise of an incarnational and sacramental religion. Our three-phase construction plan for the Parish . . . points to higher values based on these religious beliefs.

Ex. 1, Msgr. Schleupner Aff. ¶ 20.

The religious message sought to be conveyed through the Parish's own property should be the message of the Plaintiffs, not that of local government. Ex. 2, Fr. Pastorius Aff. ¶ 35; Ex. 11, Williams Aff. ¶¶ 5, 7. Defendants have attempted to dictate the religious message expressed by the Sts. Peter and Paul property, calling the proposed demolition "an irreplaceable [sic] loss to . . . your church." Ex. 2, Fr. Pastorius Aff., Attachment H' thereto (emphasis added).

Through the demolition of the Monastery, the Parish seeks to express its own religious message regarding the centrality of the Church building to the life of the Parish, Ex. 2, Fr. Pastorius Aff. ¶ 30; Ex. 11, Williams Aff. ¶ 3; Ex. 4, Michels ¶ 10. Demolition of the Monastery expresses to the Parish, particularly the youth of the Parish, that the Parish exists to meet the spiritual needs of today's community, not a bygone past. Ex. 2, Fr. Pastorius Aff. ¶ 31; Ex. 4, Michels Aff. ¶ 10.

The three-phase construction plan symbolizes for the Parish a commitment to renewal and inclusivity for all those, including those with handicaps, who presently wish to worship with the Parish community. Ex. 2, Fr. Pastorius Aff. ¶ 32, 33; Ex. 7, Crabtree Aff. ¶ 10. The construction plans have been at the center of a renewal and increased participation in Parish life, and Defendants' continued prohibition of these plans greatly hamper this renewal. Ex. 8, Dyer Aff. ¶ 4; Ex. 2, Fr. Pastorius Aff. ¶ 33.

The proposed movement of stained glass from the Monastery to the Church Annex where it can be observed, as well as the proposed improved

view of the Church building and its stained glass through the Monastery's demolition, are other examples of the religious expression embodied in the Parish's construction plans. Ex. 2, Fr. Pastorius Aff. ¶¶ 30, 34 (and Attachment D-5 (photograph of stained glass to be moved)). As one commentator has noted, "[o]ne of the most spectacular and vivid symbolic devices used in Christian architecture was stained glass, which was designed to enlighten church interiors with an awe-inspiring brilliance as well as to perform the didactic function of religious edification." Thomas Pak, Free Exercise, Free Expression, and Landmarks Preservation, 91 Colum. L. Rev. 1813, 1841 (1991).

Plaintiffs' desire to express their beliefs through their buildings conforms to common sense and is not unique to them. A corporation involved in high finance is likely to choose a different corporate headquarters than a non-profit organization that directly serves those in need. Buildings speak to the public and are utilized by property owners to reflect and achieve their goals.

In short, because Plaintiffs' proposed construction plans for the Monastery site implicates protected religious association and expression rights, Smith II requires that Plaintiffs' free exercise claim be analyzed under the strict scrutiny/compelling interest standard.

## **2. The Maryland Constitution**

The "compelling interest" standard also applies to religious freedom claims brought under Article 36 of the Maryland Constitution's Declaration of Rights. McMillan v. State, 258 Md. 147, 152 (1970).

The Maryland Constitution provides broader protection for religious liberty than the federal constitution.<sup>2</sup> In contrast to other constitutional provisions, the Maryland Court of Appeals has never held that the federal and Maryland constitutional provisions relating to religion are in pari materia and should receive like construction. In Supermarkets Gen. Corp. v. Maryland, 286 Md. 611, 625 (1979), the Maryland Court of Appeals expressly reserved the question of whether Article 36 of the Maryland Declaration of Rights and the Establishment Clause of the First Amendment are in pari materia. Later, in Barghout v. Mayor and City Council of Baltimore, 325 Md. 311, 327 (1992), the Maryland Court of Appeals held that "Article 36 does not contain an establishment clause." In interpreting Article 36, the Barghout court did not make a single reference to the Free Exercise Clause of the U.S. Constitution or to any federal case. Rather, Maryland's highest court relied on the unique text and history of Article 36 to decide the case. Barghout, 325 Md. at 322. See also, Free Exercise in the Free State:

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<sup>2</sup> Article 36 of the Maryland Declaration of Rights provides, in relevant part:

Religious freedom

That as it is the duty of every man to worship God in such manner as he thinks most acceptable to Him, all persons are equally entitled to protection in their religious liberty; wherefore, no person ought by any law to be molested in his person or estate, on account of his religious persuasion, or profession, or for his religious practice, unless, under the color of religion, he shall disturb the good order, peace or safety of the State, or shall infringe the laws of morality, or injure others in their natural, civil or religious rights . . . .



Maryland's Role in the Development of First Amendment Jurisprudence, 18 U. Balt. L. Rev. 81 (1989).

The most explicit discussion of Article 36 occurred in McMillan v. State, 258 Md. 147 (1970), where the Maryland Court of Appeals ruled that "the State may abridge the religious practices of any individual only upon a demonstration that some compelling state interest outweighs the interest of the individual in his religious tenets." Id. at 152. In contrast to Smith II's interpretation of the U.S. Constitution, McMillan in no way limited the application of the "compelling interest" standard under the Maryland Constitution. Thus, regardless of whether the Defendants' actions are "neutral and generally applicable" or whether Plaintiffs have proven a "hybrid" claim under the U.S. Constitution, the Maryland Constitution requires state and local governments in Maryland to demonstrate a compelling interest to justify abridging religious practices.

Interpretation of Maryland's Constitution by this State's highest court is binding upon this Court. See Parke, Davis & Co. v. Health Cross Stores, Inc., 364 F.2d 214 (4th Cir. 1966) (citing the Rules of Decision Act, 28 U.S.C. § 1652). The Maryland Court of Appeals' "declarations of the requirements of Maryland's constitution are final and completely authoritative." Id. at 215. This Court should follow McMillan and apply the compelling interest test to Plaintiffs' claim in Count III, brought under Art. 36 of the Maryland Declaration of Rights.

**C. Defendants' Actions Substantially Burden Plaintiffs' Exercise of Religion**

Summary judgment in favor of Plaintiffs is appropriate under both the U.S. and Maryland constitutions because Defendants are substantially burdening the exercise of Plaintiffs' sincerely held religious beliefs without a compelling governmental interest. E.g., Church of the Lukumi Babalu Aye, 508 U.S. at 531-32; Smith II, 494 U.S. at 884; Sherbert, 374 U.S. at 402-403; McMillan, 258 Md. at 152. "[A] law restrictive of religious practice must advance 'interests of the highest order' and must be narrowly tailored in pursuit of those interests." Church of the Lukumi Babalu Aye, 508 U.S. at 546 (citations omitted).

A substantial burden on religious exercise exists when the government prohibits actions motivated by sincerely held religious belief. "A person who is barred from engaging in religiously motivated conduct is barred from freely exercising his religion." Smith II, 494 U.S. at 893 (O'Connor, J., concurring). Courts traditionally decline to probe the substance of religious belief or to interfere with the decisions of religious organizations. E.g., Thomas v. Review Bd., 450 U.S. 707, 716 (1981) ("[C]ourts are not arbiters of scriptural interpretation."); United States v. Lee, 455 U.S. 252, 257 (1982) (not up to courts to assess integrity of religious beliefs). Rather, judicial examination of the religious claimant's beliefs is limited to whether the beliefs are sincerely held and religious in nature. The Supreme Court has noted that the First Amendment protects actions "based on sincerely held religious beliefs." Frazee v. Illinois Dep't of

Employment Sec., 489 U.S. 829, 834 (1989). Plaintiffs' plan to demolish the Monastery and proceed with its three-phase construction plan is indisputably based on sincerely held religious beliefs.

This is not the first case in which a court has considered the substantial burden on religious exercise caused when an historic preservation ordinance prevents a church from using its own property to fulfill its religious mission and meet the religious needs of its congregation. In First Covenant, 840 P.2d 174 (Wash. 1992), the Supreme Court of Washington ruled that the mere designation of a church as a historic landmark violated the U.S. and Washington state constitutions because of the "administrative" (seeking approval and negotiating with the government prior to making religiously-motivated changes) and "financial" (decrease in property value) burdens that designation placed on the church. Id. at 185. The burden on religious exercise here is even greater than in First Covenant. Plaintiffs have not only suffered administrative and financial burdens from Defendants' actions; more importantly, Plaintiffs have been prohibited by Defendants from fulfilling their actual plans to make religiously motivated changes to Plaintiffs' own property.

The Washington Supreme Court recently affirmed its First Covenant analysis and conclusion that the designation of a church as a historic landmark is a substantial burden on religious exercise if it inhibits the church from pursuing its religious activities. In First United Methodist Church, 916 P.2d 374 (Wash. 1996), the court held that the proposed designation was a substantial burden because the designation

"could result in a significant burden on free exercise. . . . If United Methodist decides to sell its property in order to respond to the needs of its congregation, it has a right to do so without landmark restrictions creating administrative or financial burdens." Id. at 381. The burden on religious exercise is much more immediate here. Defendants' actions absolutely prohibit the religious plans that Plaintiffs intend to implement immediately. In United Methodist, the burden was a merely potential impact on religiously motivated conduct. Here, Plaintiffs are suffering an ongoing prohibition on religiously motivated conduct designed to meet the current needs of the Sts. Peter and Paul Parish congregation. Importantly, the United Methodist court also recognized that "'Religious property use is diverse. In addition to worship, churches make use of property for a variety of other religious purposes such as education, day care, the provision of food and shelter, counseling, and retreats.'" Id. at 380 (quoting approvingly from amicus brief).

Similarly, in Society of Jesus of New England v. Boston Landmarks Comm'n, 564 N.E.2d 571 (1990), a religious organization "faced with an aging, oversized building," sought to renovate its property for liturgical reasons. The Supreme Judicial Court of Massachusetts ruled that the Boston Landmarks Commission violated the religious freedom provision of the Massachusetts Constitution when it refused to allow the religious organization to renovate its property.

Here, Defendants have established a regulatory scheme under which Plaintiffs may not make religiously-motivated changes to the exterior of

their property, including demolition, without obtaining the approval of municipal officials. Ex. 12. By preventing Plaintiffs from demolishing the Monastery and continuing with their three-phase construction plan, Defendants have directly interfered with Plaintiffs' exercise of their religious beliefs.

**1. Plaintiffs' General Religious Obligations Are Burdened**

Plaintiffs' sincerely held religious beliefs, the canon law of the Roman Catholic Church, and other ecclesiastical authority, such as a statement from the American Catholic Bishops, require Plaintiffs to use their property to further the religious mission of the Roman Catholic Church. E.g., Ex. 1, Msgr. Schleupner Aff. ¶¶ 4, 8, 9, 18-20. The demolition of the Monastery and the Parish's three-phase construction project is designed to meet these religious obligations. Through this project, the Parish seeks to promote full participation by all members of the Parish in worship services, enhance the religious ministry and education programs of the Parish, and communicate an appropriate religious message to the community.

The canon law of the Catholic Church regulates the internal life of the Church, delineating the rights and obligations of all the Catholic faithful and of those in positions of leadership. Ex. 1, Msgr. Schleupner Aff. ¶ 4. Since canon law is morally binding on all Catholics, government action that prevents or impedes Catholics from obeying canon law is a significant burden on the exercise of the Catholic religion. Id. Canon law has particular application to this case because it regulates matters such as worship, ministry, education,

and the administration of property. Id. See generally, Catholic University, 83 F.3d 455 (discussing canon law).

Under canon law, property of the Catholic Church must be used to promote the proper mission of the Church including worship, ministry, and education. Ex. 1, Msgr. Schleupner Aff. ¶ 8; Pastorius Aff. ¶ 16. The Parish wishes to pursue its specific religious mission of fulfilling "the spiritual and educational needs of our parish community, the larger Catholic community and the greater Cumberland community." Ex. 2, Pastorius Aff. ¶ 17 and Attachment I thereto (Parish Mission Statement). Church property may not be amassed to serve purely secular goals, but must be used to serve in meeting the spiritual needs of the people entrusted to the care of Cardinal Keeler and Fr. Pastorius. Ex. 1, Msgr. Schleupner Aff. ¶ 9. Defendants' actions prevent Plaintiffs from using their property to promote to proper mission of the Church.

## 2. Plaintiffs' Religious Worship Is Burdened

The demolition and three-phase construction plan are compelled by Plaintiffs' religious obligations relating to worship. Under canon law, the pastor of the Parish is to "see to it that the Christian faithful are nourished through a devout celebration of the sacraments and especially that they frequently approach the sacrament of the Most Holy Eucharist and the sacrament of penance." Ex. 1, Msgr. Schleupner Aff. ¶ 12. Under canon law, the faithful of the Parish have the right to receive such sacraments. Ex. 1, Msgr. Schleupner Aff. ¶ 10. The demolition of the Monastery and the three-phase construction plan are

directly motivated by Plaintiffs' religious beliefs relating to worship in five important ways.

First, the Parish's plans include construction of a new reconciliation room for the reception of the sacrament of penance. Ex. 2, Fr. Pastorius Aff. ¶ 19. The Parish's current confessionals do not adequately maintain confidentiality and are not easily accessible for those with handicaps. Id. A number of parishioners have expressed reservations about receiving the sacrament of penance under the current conditions at the Parish. Id.; Ex. 4, Michels Aff. ¶ 4; Ex. 5, Ruppenkamp Aff. ¶ 9; Ex. 6, Sr. Dressman Aff. ¶ 6. To meet these sacramental needs and to fulfill their religious obligations regarding the frequent reception of the sacrament of penance, Plaintiffs' proposed Church Annex includes the new reconciliation room.

Second, the planned demolition and construction will enhance the liturgical celebration of the sacrament of the Most Holy Eucharist at Masses in the Church building. The American Catholic Bishops, in Environment and Art in Catholic Worship, recommended construction of a "gathering space" for pre- and post-liturgy gatherings. Such a space "can encourage . . . the building of the kind of community sense and feeling recognized to be a prerequisite of good celebration." Ex. 1, Msgr. Schleupner Aff. ¶ 22. The Parish's construction plans include a meeting room in the Church Annex and a courtyard/gardens, both with direct access to the Church building, to meet this need for a gathering space to improve the Parish's worship. Ex. 1, Msgr. Schleupner Aff. ¶ 22; Pastorius Aff. ¶ 18. The proposed gathering spaces have been

identified by Sts. Peter and Paul parishioners as actions that will improve the reception of the sacraments and strengthen community worship. Ex. 7, Crabtree Aff. ¶ 5; Ex. 5, Ruppenkamp Aff. ¶ 12. The outdoor courtyard/gardens will also allow for outdoor religious processions, recommended under Catholic liturgical norms, into the Church building for Mass on certain Holy Days such as Palm Sunday. Ex. 2, Pastorius Aff. ¶ 21; Ex. 7, Crabtree Aff. ¶ 6. Such spaces must be connected to the Church building, and thus require demolition of the Monastery, in order to provide coherence and continuity to the worship services of the Parish. Ex. 2, Fr. Pastorius Aff. ¶ 22.

Third, the demolition and three-phase construction plan will improve accessibility and increase participation by the faithful in the sacrament of the Most Holy Eucharist at Masses in the Church building and all religious activities of the Parish. The American Catholic Bishops have stated that: "Those who suffer from handicaps of one sort or another, must be carefully planned for so that they can participate in the liturgy without unnecessary strain or burden." See Ex. 1, Msgr. Schleupner Aff. ¶ 23. The demolition and construction plans include a handicapped-accessible reconciliation room and adequate restroom and parking facilities. Id. The lack of appropriate facilities currently inhibits many parishioners, particularly the elderly and handicapped, from participating fully in the sacramental life of the Parish. Ex. 2, Fr. Pastorius Aff. ¶ 18; Ex. 4, Michels Aff. ¶ 8; Ex. 9, Sell Aff. ¶ 4. Further, the demolition and proposed construction will allow full participation in Masses by families of the Parish. Under canon law, the



pastor is to "labor diligently so that spouses and parents are supported in fulfilling their proper duties, and he is to foster growth in the Christian life within the family." Ex. 1, Msgr. Schleupner Aff. ¶ 13 (canon 529 § 1). Currently, some families do not worship at Masses as a family because of the lack of a nursery, a problem that will be cured by the proposed construction. Ex. 2, Fr. Pastorius Aff. ¶ 18; Ex. 5, Ruppenkamp Aff. ¶ 8; Ex. 10, Spriggs Aff. ¶ 4; Ex. 6, Sr. Dressman Aff. ¶ 5. The proposed construction plans fulfill the Mission Statement of Sts. Peter and Paul Parish to "[s]trive to meet the spiritual needs of all members of our parish." Ex. 2, Fr. Pastorius Aff. ¶ 18, Attachment I thereto. The exclusion of any individuals from the Parish's life and worship by Defendants is a substantial burden on the exercise of religion. Ex. 1, Msgr. Schleupner Aff. ¶ 23.

Fourth, the demolition and planned construction will allow Parish members to participate meaningfully in other worship activities such as prayer and retreats. The proposed meeting room in the Church Annex will provide space for retreats and prayer group meetings that is currently lacking. Ex. 2, Fr. Pastorius Aff. ¶ 20. The proposed courtyard/gardens will provide a place for reflection, whether or not connected with a retreat or church-related function. Ex. 2, Fr. Pastorius Aff. ¶ 21. Parishioners have repeatedly expressed the spiritual need to have such worship and prayer opportunities. Ex. 4, Michels Aff. ¶ 5; Ex. 5, Ruppenkamp Aff. ¶ 11. By moving religious stained glass from the Chapel in the abandoned Monastery to the proposed Church Annex, the construction plans will provide parishioners with the

opportunity to reflect spiritually on this religious art. Ex. 2, Fr. Pastorius Aff. ¶ 23. All of these worship activities require demolition of the Monastery and construction of the proposed facilities on the site currently occupied by the Monastery. Ex. 2, Fr. Pastorius Aff. ¶ 9 and Attachment E thereto; Ex. 7, Crabtree Aff. ¶ 4.

Fifth, Defendants' actions in prohibiting the Parish from meeting the religious needs of the parishioners will cause parishioners to leave the Parish. Ex. 7, Crabtree Aff. ¶ 9. The Catholic Church is a domicile-based, hierarchical church. Ex. 1, Msgr. Schleupner Aff. ¶ 24. By refusing to grant the demolition permit, Defendants have put pressure on parishioners to attend other, more congenial parishes. Defendants are interfering with the internal structure and administration of the Church by preventing Sts. Peter and Paul from meeting the needs of parishioners who live within the Parish territory. Forcing parishioners to meet their religious needs at other parishes violates an important principle of canon law and Catholic Church polity. Id.

### 3. Plaintiffs' Exercise of Religious Ministry, Education And Association Is Burdened

The demolition of the Monastery and the three-phase construction plan are motivated by Plaintiffs' religious obligations relating to ministry, education and association. Under canon law, the pastor of the Parish is to "see to it that the lay Christian faithful are instructed in the truths of the faith," "take special care for the Catholic education of children and of young adults," and "acknowledge and promote the proper role which the lay members of the Christian faithful have in

the Church's mission by fostering their associations for religious purposes." Ex. 1, Msgr. Schleupner Aff. §§ 12, 13. In return, under canon law the faithful of the Parish have the concomitant rights to participate in the ministry of the Church, to receive Catholic instruction, and to associate for religious purposes. Ex. 1, Msgr. Schleupner Aff. § 10. Similarly, the Mission Statement of the Parish expressly includes "fulfilling the spiritual and educational needs of our parish community, the larger Catholic community, and the greater Cumberland community." Ex. 2, Fr. Pastorius Aff. § 17, Attachment I thereto.

The demolition and three-phase construction plan are directly motivated by these religious obligations. The proposed meeting room in the Church Annex will be utilized for religious education of children in the Catholic elementary school at the Parish and of children in public schools. Ex. 2, Fr. Pastorius Aff. § 26. As recognized by the U.S. Supreme Court, parochial schools are an integral part of the mission of the Catholic Church, serving as a vehicle to transmit religious faith: "[I]n short, parochial schools involve substantial religious activity and purpose." Lemon v. Kurtzman, 403 U.S. 602, 616 (1971). The proposed meeting room will also be used to expand existing religious programs in the Parish, and to foster associations among parishioners. The mission of the Parish includes calling "upon all members of our parish to use their God-given talents to proclaim and to bear witness to Jesus and His Gospel message," and the Parish needs the proposed Church Annex to fulfill this mission. Ex. 2, Fr. Pastorius Aff. § 27; Ex. 5,

Ruppenkamp Aff. ¶¶ 5, 6 (need for facilities for youth ministry); Ex. 6, Sr. Dressman Aff. ¶ 7 (need for facilities for religious education); Ex. 4, Michels Aff. ¶ 6 (need for facilities for adult religious associations).

These activities require demolition of the Monastery and construction, on the site currently occupied by the Monastery, of the proposed facilities because there are currently not sufficient facilities and because the proposed uses are intrinsically connected to the Church building. Ex. 2, Fr. Pastorius Aff. ¶¶ 9, 28 and Attachment E thereto ("Overview of Restored SS. Peter and Paul Parish Compound"); Ex. 6, Sr. Dressman Aff. ¶ 8; Ex. 4, Michels Aff. ¶ 6.

#### 4. Plaintiffs' Religious Expression Is Burdened

As discussed supra at 16-19, Plaintiffs' proposed construction plans embody religious expression motivated by sincerely held religious belief. Defendants have prohibited Plaintiffs from expressing, through the Monastery demolition and new construction, the vitality of their Catholic beliefs.

In sum, the proposed demolition of the Monastery and construction on its site of badly needed religious facilities are motivated by deeply held religious beliefs relating to worship, association, education, ministry and expression. Defendants' actions substantially burden the exercise of religion by preventing Plaintiffs from meeting these religious needs as dictated by Plaintiffs' religious faith.

D. Defendants Have No Compelling Interest in Historic Preservation, Nor Have They Used the Least Restrictive Means Available

Since Defendants' actions burden Plaintiffs' exercise of religion, Defendants have the burden of establishing that their denial of the demolition permit is the least restrictive means of furthering a compelling governmental interest in historic preservation. See, e.g., Brown v. Peyton, 437 F.2d 1228, 1231 (4th Cir. 1971).

The "compelling interest" test is exceedingly difficult for Defendants to meet. The Supreme Court recently noted that in the area of religious exercise, the "compelling interest" standard is not "watered down," but "really means what it says." Church of the Lukumi Babalu Aye, 508 U.S. at 546 (quoting Smith II). The Supreme Court has stated that religious liberty may be subordinated only to "interests of the highest order," Yoder, 406 U.S. at 215, and that government may burden religious exercise only to avoid "the gravest abuses, endangering paramount interests," Sherbert, 374 U.S. at 406 (citation omitted). For example, in Yoder, Wisconsin's interest in the education of children through its compulsory education law was not sufficient to burden religion; in Sherbert, the state's financial interest in denying unemployment compensation to religious adherents was insufficient.

In Forest Hills Early Learning Ctr., Inc. v. Lukhard, 728 F.2d 230, 240-241 (4th Cir. 1984), the Fourth Circuit described the "Compelling interest" test as follows:

If. . . a particular law does impede "religious" activity, even indirectly, it violates the free exercise clause, unless the impediment is justified by a compelling

state interest arising from some substantial threat to public health, safety, peace or order.

Accord, Brown, 437 F.2d at 1231. In the words of Supreme Court Justices Black and Douglas, this Court should ask whether the historic preservation ordinances at issue are "imperatively necessary to protect society as a whole from grave and pressingly imminent dangers." Barnette, 319 U.S. at 643-644 (concurring opinion). Here, the answer is surely no.

The stated purposes for Defendants' Historic District Regulations are: safeguarding the heritage of the City; stabilizing and improving property values; fostering civic beauty; strengthening the local economy; and promoting the use and preservation of historic districts and/or sites for the education, welfare, and pleasure of the residents of the City. Ex. 12, Cumberland Ordinance No. 2970, § 2.1.a. These interests are not "paramount" or "of the highest order," nor are they necessary to protect society from a "substantial threat to public health, safety, peace or order."

In 1994, the Maryland Attorney General opined that a Maryland municipality's interest in historic preservation is not compelling. The Attorney General interpreted a Maryland municipality's historic zoning ordinance whose purposes were identical to those of Ordinance No. 2970, Op. Md. Att'y Gen. 94-037 at 260, and concluded that "the government interest at stake [in historic district zoning] falls short of meeting the rigorous 'compelling interest' standard." Id. at 273. Although not binding on this Court, the Attorney General's interpretation of local

historic preservation ordinances should be given great consideration. State v. Crescent Cities Jaycees Foundation, Inc., 330 Md. 460, 470 (1993) (citations omitted).

Courts that have addressed the issue have also consistently held that the governmental interest in historic preservation is not compelling. The Washington State Supreme Court has held that a city's "interest in preservation of aesthetic and historic structures is not compelling and it does not justify the infringement of [a church's] right to freely exercise religion." First Covenant, 840 P.2d at 185.

Likewise, the Supreme Judicial Court of Massachusetts held:

The governmental interest in historic preservation, though worthy, is not sufficiently compelling to justify restraints on the free exercise of religion, a right of primary importance.

Society of Jesus, 564 N.E.2d at 574.

Plaintiffs are aware of no case, state or federal, suggesting that historic preservation is a "compelling" governmental interest.

Further, Defendants must do even more than show that their historic preservation regulations as a whole serve a compelling interest. Defendants must also show that an exception for Plaintiff as a religious claimant would defeat any such compelling interest. As discussed supra at 13-14, Defendants have an elaborate approval process that allows for individualized exemptions. The Commission's power to grant discretionary exemptions demonstrates that granting Plaintiffs' demolition application will not undermine the asserted interest in historic preservation. A single exemption based on demonstrated sincere

religious conduct will not frustrate Defendants' overall goal of historic preservation. Defendants' denial of Plaintiffs' application is simply not the least restrictive means of furthering Defendants' non-compelling interest in historic preservation, and thus violates the U.S. and Maryland constitutions.

### III. Defendants Have Committed An Unconstitutional Taking Of Property

Count VI of Plaintiffs' Complaint alleges the taking of private property without just compensation in violation of the U.S. Constitution. The Fifth Amendment to the U.S Constitution, as applied to the states through the Fourteenth Amendment, states that "nor shall private property be taken for public use, without just compensation." U.S. Const. Amend. V.

In Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 415 (1922), the Supreme Court recognized that "while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking." Since that time, the Supreme Court has "'generally eschewed any "'set formula'" for determining how far is too far, preferring to "engag[e] in . . . essentially ad hoc, factual inquiries."'" Lucas v. South Carolina Coastal Council, 505 U.S. 1003, 1015 (1992) (citations omitted). The Lucas Court further noted, "[w]e have, however, described at least two discrete categories of regulatory action as compensable without case-specific inquiry into the public interest advanced in support of the restraint." Id. The first category involves "physical invasions." "The second situation in which we have found categorical



treatment appropriate is where regulation denies all economically beneficial or productive use of land." Id. (citing cases). See also Agins v. City of Tiburon, 447 U.S. 255, 260 (1980) (noting that the Fifth Amendment is violated when a land-use regulation "denies an owner economically viable use of his land").

Here the Commission found, on September 26, 1995, that "no economically feasible plan can be formulated for [the Monastery's] preservation." Ex. 14, Stipulation and Agreement. Defendants have admitted that the Commission made this finding. Defs.' Answers at page 3, paragraph 17 (admitting allegation of Complaint paragraph 31). Yet Defendants continue to refuse to allow Plaintiffs to proceed with demolition--the only economically feasible alternative left to them. Defendants have denied Plaintiffs any economically viable use of their property and thus have committed an unconstitutional taking.

The Affidavit of Fr. Pastorius, unnecessary in light of the Commission's own finding, confirms that the Monastery is currently of no benefit to the Parish. Defendants will not allow Plaintiffs to simply leave the building as is, but rather are requiring Plaintiffs to expend large sums on maintenance. Ex. 2, Fr. Pastorius Aff. ¶ 12 and Attachment G. Simply to maintain the shell of the building would cost over \$386,000 without any benefit to the Church. Id. at ¶ 6 and Attachments B, C. Partial renovation of the Monastery would cost over \$900,000 while complete renovation would cost \$2,000,000. Id.

Defendants in this case have admitted that their refusal to grant Plaintiffs' application for a certificate of appropriateness leaves

Plaintiffs with no economically feasible use for their property. Thus this case fits within the second category of Lucas--an admitted denial of all beneficial use of property. Because of the Commission's own findings and admissions, summary judgment should be entered in Plaintiffs' favor as to Count VI.

**IV. Defendants Exceeded Their Authority Under The State Historic Preservation Enabling Statute, Which Required The Commission To Grant Plaintiffs' Demolition Application**

By rejecting Plaintiffs' demolition application, Defendants have illegally usurped power that they do not have under Maryland state law. Cumberland's authority to regulate property in historic areas comes entirely from, and is limited by, the Maryland Historic Area Zoning enabling statute, Md. Ann. Code art. 66B §§ 8.01 et seq. Since the State enabling statute does not grant Defendants authority to reject applications where preservation is not economically feasible, Defendants' Ordinance No. 2970 and their refusal to grant Plaintiffs' application for a demolition permit violate state law.

In Count IX, Plaintiffs bring a claim for violation of state law. See Compl. ¶¶ 33, 74-76. The Maryland state historic preservation enabling statute, whose procedures are mandatory for municipalities, requires local commissions to grant applications once 90 days have passed after a finding that "no economically feasible plan" for the preservation of a privately-owned building can be formulated. See Md. Ann. Code art. 66B, § 8.09 (relevant version attached as Ex. 15). In stark contrast to the state enabling statute, the Cumberland ordinance

applied to Plaintiffs required the Commission to reject Plaintiffs' application, despite the Commission's conclusion that there was no economically feasible plan for the preservation of the Monastery. Ordinance No. 2970, Ex. 12, section 2.7.c; Memorandum from City Solicitor, Ex. 16 at 5. Since the City and the Commission have no power under Md. Ann. Code art. 66B, § 8.09 to reject Plaintiffs' application once they found "no economically feasible plan for preservation," Ordinance No. 2970 conflicts with the state enabling statute, is invalid, and Plaintiffs' application must be granted.

The zoning authority of a municipality arises not from its general police power, but instead is derived solely from the authority delegated to the municipality by the General Assembly under the state enabling law, Article 66B of the Maryland Code. Cardon Investments v. Town of New Market, 55 Md. App. 573, 588 (1983), aff'd, 302 Md. 77 (1984). When a local government exercises powers pursuant to an enabling law of the Maryland General Assembly, the locality must follow the methods, procedures and substance of the State enabling law. See, e.g., Urbana Civic Ass'n, Inc. v. Urbana Mobile Village, Inc., 260 Md. 458, 461-62 (1971) (local government has no authority to provide an appeal not provided for in Article 66B); Scrivner v. Mayor and City Council of Baltimore, 191 Md. 165, 169 (1948) (Baltimore City charter cannot vary the time for appeal established in Article 66B).

As the Maryland Attorney General has stated, a municipality's "authority to enact historic district zoning, therefore, is limited to the powers provided under the Historic Area Zoning Act, Article 66B, §§

8.01 through 8.15." 74 Op. Md. Att'y Gen. 176, 177 (1989). The Attorney General of Maryland has concluded that "the enabling legislation set forth in Article 66B, Section 8.01 et seq., establishes a specific method for the consideration of applications for new construction or alteration of existing structures within the historic district and that a local government exercising historic zoning pursuant to the State enabling authority cannot depart from this method." 62 Op. Md. Att'y Gen. 490, 490-91 (1977) (emphasis added). The Attorney General's opinions, which simply confirm the case law in this area, are to be given great consideration by courts interpreting Maryland law. See Crescent Cities Jaycees Foundation, 330 Md. at 470.

The procedures mandated by the state enabling statute relevant to this case are found in Md. Ann. Code art. 66B, §§ 8.01 et seq.<sup>3</sup> Section 8.12 of the enabling statute generally requires local historic preservation commissions to act on applications within forty-five (45) days. The procedure to be followed by a commission is set forth in § 8.09, which states:

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<sup>3</sup>Cumberland Ordinance No. 2970, Ex. 12, which was applied to Plaintiffs, was passed under the Maryland state enabling statute that had existed unchanged since 1971. Thus, this Memorandum will quote the language from the 1971 statute that applies to this case.

Effective October 1995, the Maryland General Assembly modified Md. Ann. Code art. 66B in ways that did not change a municipality's authority and are not relevant to this dispute. In addition, the City of Cumberland recently passed a new historic preservation ordinance that may comply with state law. However, the new ordinance did not become effective until January 1, 1996, after Plaintiffs' application had been finally denied. Ordinance No. 3208, attached as Ex. 18. This new ordinance was never applied to Plaintiffs' application.

(a) If an application is submitted for reconstruction or alterations affecting the exterior appearance of a structure or for the moving or demolition of a structure, the preservation of which the commission deems of unusual importance to the county or municipal corporation or unusual importance to the entire State or nation, the commission shall attempt with the owner of the structure to formulate an economically feasible plan for the preservation of the structure. Unless in these circumstances the commission is satisfied that the proposed construction, alteration, or reconstruction will not materially impair the historic value of the structure, the commission shall reject the application for reconstruction or alteration, filing a copy of its rejection with the building inspector by whatever name known of the county or municipal corporation. An application for any such reconstruction or alteration, if rejected, shall not be renewed within a period of one year after the rejection.

(b) If an application is submitted for reconstruction or alteration, or for moving or demolition of a structure that the commission deems of unusual importance and no economically feasible plan can be formulated, the commission shall have ninety days from the time it concludes that no economically feasible plan can be formulated to negotiate with the owner and other parties in an effort to find a means of preserving the building.

The meaning and purpose of the enabling statute is clear. When an application for alteration or demolition is made relating to an unusually important structure, the state statute requires the parties to attempt to formulate an economically feasible plan for preservation. § 8.09(a). If an economically feasible plan for preservation is formulated, the state grants local commissions the authority to reject the application, unless the construction, alteration or reconstruction will not materially impair the significance of the structure. Id.

However, the legislature recognized that special care must be taken to avoid imposing an unfair burden on individual property owners where no economically feasible plan for the preservation of the structure can be formulated.<sup>4</sup> The state statute clearly treats applications where no economically feasible plan can be formulated (subsection (b)) different from those where preservation is feasible (the second sentence of subsection (a)). Where "no economically feasible plan can be formulated," the application must be granted, but the statute allows the commission an additional 90 days to negotiate "in an effort to find a means of preserving the site or structure." § 8.09(b). When preservation of private property is not economically feasible, local commissions are not given authority to reject applications; rather, the commission is given only a 90-day opportunity to negotiate with the owner in an effort to find a way to preserve the property.

However, Cumberland Ordinance No. 2970, the ordinance applied by Defendants in denying Plaintiffs' application, contradicts the state enabling statute. The pertinent language from Cumberland's historic district ordinance states:

In the event that the commission and the owner are unable to reach either an economically feasible plan for preservation or any other means of preserving the building, and unless in these circumstances the commission is satisfied that the proposed construction, alteration, or reconstruction will not materially impair the

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<sup>4</sup>The Defendant Commission found, on September 26, 1995, that "no economically feasible plan can be formulated for [the Monastery's] preservation." Ex. 14.

historic value of the structure, the commission  
shall reject the application.

7.c. (emphasis added). This underlined language is not authorized by the enabling statute, and indeed is directly contrary to the enabling statute's requirement that when preservation is not economically feasible, applications are not to be rejected automatically, but instead can be held for a 90-day negotiating period. § 8.09(b). By adding non-economically-feasible applications to the presumptively rejected category, Defendants have eviscerated the substance of § 8.09 by treating such applications the same as applications where preservation is economically feasible.

The impermissible language added by Cumberland to the Ordinance was the very provision relied upon by Defendants to deny Plaintiffs' application. A legal opinion from the City Solicitor regarding the procedure to be followed by the Commission in this case under Cumberland's Ordinance No. 2970 states:

[A]ssuming that the Commission and the Archdiocese have been unable to reach either an economically feasible plan for preservation or any other means of preserving the building, the Commission is required to reject the application unless it is satisfied that the demolition will not materially impair the historic value of the structure.

Ex. 16 at 5 (emphasis added). Cumberland's Ordinance ignores economic feasibility and was applied in this case in direct conflict with the state enabling statute which has no such presumption of rejection for applications where preservation is not feasible. This unlawful provision in Ordinance No. 2970 that was applied to Plaintiffs has recently been corrected by Defendants. Defendant Mayor and City Council

of Cumberland passed Ordinance No. 3208, effective January 1, 1996, which among other changes removed the unauthorized power to reject applications where preservation is not economically feasible. The change in the City's historic preservation ordinance, which incorporates language that is authorized by and actually contained in the state enabling statute, demonstrates that the offending language in Ordinance No. 2970 needed to be corrected.

Cumberland's Ordinance No. 2970, prior to its recent amendment, rendered the entirety of Art. 66B § 8.09(b) meaningless. The Maryland Court of Appeals has repeatedly ruled that "absent a clear indication to the contrary, a statute, if reasonably possible, is to be read so that no word, clause, sentence, or phrase is rendered surplusage, superfluous, meaningless, or nugatory." E.g., Mayor and City Council of Baltimore v. Hackley, 300 Md. 277, 283 (1984). The enabling statute distinguishes between applications where preservation is economically feasible (the commission must reject the application) and applications where preservation is not economically feasible (the commission must grant the application). Structurally, the former are discussed in the second sentence of § 8.09(a), while the latter are addressed in a separate subsection, § 8.09(b). Logically, there would be no need for any determination as to economic feasibility, let alone a separate statutory provision dealing with situations where preservation is not economically feasible, if that determination has no effect on the outcome of the application.



The only reasonable interpretation of the Maryland enabling statute is that it requires local commissions to grant applications if the commission finds there is no economically feasible plan for preservation. "[S]tatutes are to be read in such way as to avoid unjust, illogical, absurd, or unreasonable consequences." Kline v. Fuller, 56 Md. App. 294, 309 (1983) (citation omitted). The legislature contemplated that commissions would grant applications when preservation was not economically feasible, because it is unreasonable and unconstitutional to leave a property owner with no economically feasible use of its property. See supra at 36-38. However, in this case, Defendants admit there is no economic way to preserve the Monastery, yet applied an Ordinance that requires Plaintiffs to preserve it anyway.

There would be no reason for the special 90-day negotiation period that is mandated when a commission finds no economically feasible plan for preservation if the application is to be rejected in any event. The 90-day negotiation period reasonably gives local government, a philanthropic organization, or other interested persons a final, last-chance opportunity to acquire the property through sale or eminent domain.<sup>5</sup> If the General Assembly thought for some reason that mandatory negotiation was desirable even if an application were to be rejected, it

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<sup>5</sup>Here, the Commission requested during the 90-day negotiation period that the City of Cumberland purchase the Monastery. However, the City declined to purchase the Monastery and indicated financial concerns and concerns over conformance with the City's plans and zoning. Ex. 17, Letter from Mayor Edward C. Athey to Commission Chairman Mason dated December 18, 1995. Defendants have shown no such concern for Plaintiffs' finances and pastoral plans.

would not have limited the 90-day period to cases where there was no economically feasible plan for preservation. Under the City's Ordinance, applicants who actually have an economically feasible plan for preservation must receive their rejection within 45 days, while applicants without a feasible plan for preservation are delayed four-and-one-half months (135 days), only to receive the same rejection.

Ordinance No. 2970, prior to its recent amendment, also stated that the Commission "shall issue a certificate of appropriateness only if it is satisfied that the historical and architectural character of the building, structure, or appurtenance will be properly preserved," Ordinance No. 2970 at 2.8.a.<sup>6</sup> As a result, the Commission's approval of Plaintiffs' demolition application under the Ordinance was impossible. Obviously, demolition of a structure necessarily impairs its historic value, since the building no longer exists.<sup>7</sup> The state enabling statute did not (and constitutionally could not) give local governments the power to reject all demolition applications for privately-owned structures.

In addressing Plaintiffs' demolition application, Defendants applied a "heads we win, tails you lose" approach to historic

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<sup>6</sup>This language is also not contained in the state enabling statute or in Cumberland's updated ordinance.

<sup>7</sup>Remarkably, during the Commission proceedings in this case, the City Solicitor suggested that the Plaintiffs' application could be granted if "demolition will not materially impair the historic value of the structure." Ex. 16 at 5. This absurd suggestion reinforces the unreasonable and illogical nature of the Ordinance that was applied in this case to deny Plaintiffs' application.

preservation. If a property owner can economically preserve a structure, it must do so; if neither the property owner nor any other entity can formulate an economically feasible plan to preserve the structure, the property owner must wait four-and-a-half months and then preserve the structure anyway. Preservation is mandated even when it costs the property owner hundreds of thousands of dollars and leaves the owner with no beneficial use. Heads the City wins, tails the property owner loses.

The Maryland legislature did not intend to leave owners of property with no economically productive use for their property, nor did the General Assembly authorize local governments to effect unconstitutional takings to preserve old, private buildings with no economic value. Under the controlling state enabling statute, the Commission was not given authority to deny Plaintiffs' application once it found there was no economically feasible plan for preservation. Although Defendants have recently amended the relevant portions of their historic preservation ordinance so that it now conforms to state law, then-existing Ordinance No. 2970, as applied to deny Plaintiffs' application, was invalid because it directly conflicted with the state enabling statute. This Court should order Defendants to grant Plaintiffs' Certificate of Appropriateness, pursuant to state law.

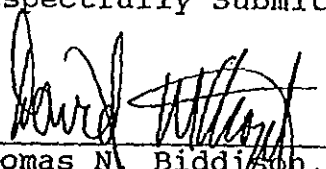
#### CONCLUSION

There is no dispute of fact material to Plaintiffs' claims under Counts II, III, VI, and IX of the Complaint. Defendants' refusal to

grant the demolition permit violates Plaintiffs' constitutional rights to religious freedom, effects an unconstitutional taking of Plaintiffs' property, and violates the state enabling statute. For all the reasons stated herein, Plaintiffs are entitled to summary judgment on Counts II, III, VI, and IX.

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in Plaintiffs' favor on Counts II, III, VI, and IX, and enter an order directing Defendants to grant Plaintiffs a Certificate of Appropriateness for the demolition of the Monastery, declaring Defendants' actions to be in violation of state law and the U.S. and Maryland Constitutions, awarding reasonable attorney's fees pursuant to 42 U.S.C. § 1988 in an amount to be determined, and granting such other relief as the Court deems just and proper. A proposed Order to this effect accompanies this Motion.

Respectfully Submitted,



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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30<sup>th</sup> day of August, 1996, a copy of Plaintiffs' Memorandum In Support Of Plaintiffs' Motion For Partial Summary Judgment, accompanying exhibits, and proposed Order, were mailed first class, postage pre-paid to H. Jack Price, Esq., City Solicitor, 61 Greene St., Cumberland, MD 21502, Attorney for Defendants; Lynne Ann Battaglia, Esquire, Kaye A. Allison, Esquire, 604 United States Courthouse, 101 West Lombard Street, Cumberland, MD 21502 and Frank W. Hunger, Esquire, Theodore C. Hirt, Esquire, Carlotta P. Wells, Esquire, Federal Programs Branch, Civil Division, U.S. Department of Justice, 901 E. Street, N.W., Room 1058, Washington, DC 20530, Attorneys for the United States.

  
\_\_\_\_\_  
David W. Kinkopf

Cardinal William H. KEELER,  
et al., Plaintiffs,

v.

MAYOR & CITY COUNCIL  
OF CUMBERLAND, et  
al., Defendants.

Civil Action No. S-96-167.

United States District Court,  
D. Maryland.

Oct. 15, 1996.

Church brought action challenging city's refusal to grant permission to demolish monastery and chapel in historic district. After finding Religious Freedom Restoration Act unconstitutional, 928 F.Supp. 591, the District Court, Smalkin, J., held that: (1) refusal to allow demolition of monastery and its replacement with buildings which would better serve needs of church violated church's freedom of religion under Federal and State Constitutions; (2) refusal to allow demolition of building which was financial drain on church and which church was required to maintain in safe repair was an unconstitutional taking under Federal and State Constitutions; but (3) proper remedy for unconstitutional taking is damages, not order enjoining the government regulation.

Ordered accordingly.

1. Health and Environment ⇨25.5(9)

Statute providing that if application for alteration of structure applies to a structure which is deemed to be of unusual importance but no economically feasible plan can be formulated, the historic commission will have 90 days to negotiate with the owners and other parties in an effort to find means of preserving the building does not require that application for alteration or demolition be granted at the end of the 90-day period if no plan is formulated, and city ordinance requiring rejection of the application in such circumstances was not contrary to the statute. Md. Code 1957, Art. 66B, § 8.09; Cumberland, Md., Ordinance No. 2970, § 7.c.

2. Constitutional Law ⇨84.5(18)

Health and Environment ⇨25.5(8)

City's denial of certificate of appropriateness for demolition of monastery and chapel infringed church's free exercise rights if affidavits of church officials, taken as true, revealed that demolition implicated elements of the Roman Catholic religion, despite claim that affidavits were self-serving and should be viewed with suspicion because they represented subjective belief that there was a religious aspect to the determination to demolish the buildings. U.S.C.A. Const. Amend. 1.

3. Constitutional Law ⇨84.5(18)

Affidavits which stated that it was the obligation of church officials to hold property for proper ends of the church, including worship, doctrine, and governance, and not for secular goals, and that existing monastery and chapel in historic district interfered with church's goals and required replacement by more suitable buildings established that church's decision to demolish monastery and chapel involved exercise of faith, thus implicating First Amendment free exercise principles. U.S.C.A. Const. Amend. 1.

4. Constitutional Law ⇨84.1

Constitutionality of government regulation that burdens religious practice depends to large extent upon neutrality of regulation with respect to religion and upon state's commitment to uniform enforcement of its law. U.S.C.A. Const. Amend. 1.

5. Constitutional Law ⇨84.5(18)

Health and Environment ⇨25.5(8)

City did not assert compelling state interest in support of historic preservation ordinance which would allow it to be enforced even when it had effect of burdening a particular religious practice. U.S.C.A. Const. Amend. 1; Cumberland, Md., Ordinance No. 2970, § 1.a.

6. Constitutional Law ⇨84.5(18)

Health and Environment ⇨25.5(8)

City's refusal to grant church certificate of appropriateness for demolition of monastery and chapel impermissibly violated church's right to free exercise of religion

protected by First Amendment and the Maryland Declaration of Rights. U.S.C.A. Const.Amend. 1; Md.Const.Declaration of Rights, Art. 36; Cumberland, Md., Ordinance No. 2970, § 7.c.

#### 7. Eminent Domain ⇐2(1)

State's regulation of property amounts to taking where regulation denies all economically beneficial or productive use of land; to amount to taking, challenged regulation must do more than place economic strain on landowner and must leave property economically idle or render property essentially valueless. U.S.C.A. Const.Amend. 5, 14; Md.Const.Declaration of Rights, Arts. 19, 24.

#### 8. Eminent Domain ⇐2(1.2)

City's refusal to issue certificate of appropriateness for demolition of monastery, which required that church maintain it in safe standard of repair, was unconstitutional taking of property due to fact that there was no economically feasible use for monastery and it was a financial drain on church. U.S.C.A. Const.Amend. 5, 14; Md.Const.Declaration of Rights, Arts. 19, 24; Cumberland, Md., Ordinance No. 2970, § 7.c.

#### 9. Eminent Domain ⇐69

When just compensation is provided for taking a property, taking ceases to be illegal and fixing of just compensation puts end to controversy. U.S.C.A. Const.Amend. 5, 14; Md.Const.Declaration of Rights, Arts. 19, 24.

#### 10. Eminent Domain ⇐270, 274(1)

Proper remedy for unconstitutional taking is not injunction against government or order seeking relief from regulation but, rather, damages. U.S.C.A. Const.Amend. 5, 14; Md.Const.Declaration of Rights, Arts. 19, 24.

Peter E. Keith, Thomas N. Biddison, Jr., and David W. Kinkopf, Gallagher, Evelius & Jones, Baltimore, MD, for plaintiffs.

H. Jack Price, Jr., Cumberland, MD, for Mayor & City Council.

Joyce Kestenbaum, U.S. Department of Justice, Civil Division, Federal Programs, Washington, DC, for Historic Preservation.

Lynn A. Battaglia, U.S. Attorney and Kaye A. Allison, Assistant U.S. Attorney, Baltimore, MD, for Intervenor, the U.S.

#### MEMORANDUM OPINION

SMALKIN, District Judge.

This action is before the Court on the plaintiffs' motion for summary judgment on Counts II, III, VI, VII and IX of their amended complaint. The defendants have opposed the motion. The issues having been fully briefed, no oral hearing is necessary. Local Rule 105.6 (D.Md.).

#### *Factual and Procedural Background*

The plaintiffs in this action, Cardinal William H. Keeler, Roman Catholic Archbishop of Baltimore, and Sts. Peter and Paul's Roman Catholic Congregation, Inc. (collectively "the Church"), sue the City of Cumberland for permission to demolish a monastery and a chapel which the plaintiffs deem to be "a draining financial liability." (Cmplt., ¶1.) The Church seeks to replace the old monastery and chapel, both of which are in disrepair, with smaller, modern facilities, and to add gardens and a parking lot. Because the church buildings are part of Cumberland's Washington Street Historic District, however, the Church cannot demolish them without first securing a Certificate of Appropriateness from the Cumberland Historic Preservation Commission. The Church applied to the Commission for such a certificate but its application was denied. This litigation followed.

In a ten-count complaint filed on January 18, 1996, the Church alleged that the City's refusal to issue the Certificate of Appropriateness violated its rights under the First, Fifth and Fourteenth Amendments to the United States Constitution and under corresponding provisions of the Maryland Declaration of Rights. In Count I of the complaint, the Church also alleged a cause of action arising under the Religious Freedom Restoration Act of 1993, 42 U.S.C. § 2000bb (RFRA). The City moved to dismiss the complaint in its entirety. On June 10, 1996, this Court granted the City's motion with respect to Count I because RFRA, which

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forms the basis of the Church's cause of action in that Count, violates the constitutional principle of separation of powers. *Keeler v. Mayor & City Council of Cumberland*, 928 F.Supp. 591 (D.Md.1996). The Court denied the City's motion with respect to the remaining counts.<sup>1</sup>

The Church now seeks summary judgment on the following counts of the complaint: Counts II and III, which allege violations of Free Exercise Rights protected by the Constitution of the United States and by the Maryland Declaration of Rights; Counts VI and VII, which allege that the City took the Church's property without just compensation, in violation of the state and federal constitutions; and Count IX, which alleges that the Historic Preservation Committee's actions violated state statutory law. In addition to the entry of summary judgment on these counts, the Church seeks an order directing the City to issue a Certificate of Appropriateness for the demolition of the monastery, a declaratory judgment, money damages, its attorney's fees, and other proper relief.

#### Summary Judgment Standards

Summary judgment may be entered in a civil case if "the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits . . . show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c). This Court must consider the facts and draw its inferences in the light most favorable to the party opposing the motion. See *Tuck v. Henkel Corp.*, 973 F.2d 371, 374 (4th Cir.1992), cert. denied, 507 U.S. 918, 113 S.Ct. 1276, 122 L.Ed.2d 671 (1993). In the present case, almost all of the material facts are uncontroverted. Indeed, the "List of Facts in Dispute" submitted by the City contains only four items, none of which, for reasons that follow, constitutes a material factual dispute for summary judgment purposes. Consequently, the material issues for

decision are issues of law, and the case is an appropriate one for summary disposition.

#### Count IX—Violations of the Enabling Statute

The Church contends that Cumberland's historic zoning ordinances violate Maryland law because they grant to the City of Cumberland authority which exceeds that contemplated by the enabling statute, Md. Ann. Code art. 66B, §§ 8.01 et seq.<sup>2</sup> Because "[a] fundamental and longstanding principle of judicial restraint requires that courts avoid reaching constitutional questions in advance of the necessity of deciding them," *Lyng v. Northwest Indian Cemetery Protective Ass'n*, 435 U.S. 439, 445, 108 S.Ct. 1319, 1323, 99 L.Ed.2d 534 (1988), and because a decision favorable to the Church on the statutory issue would render consideration of the constitutional claims unnecessary, this Court must first address the Church's arguments under Count IX.

According to the Church, "the very part of the [Cumberland] Ordinance relied on by Defendants to reject Plaintiffs' application was different than [sic]<sup>3</sup> and contrary to the relevant state enabling statute." (Church's Reply at 17.) The Church refers to section 7.c. of Ordinance No. 2970, which addresses those situations in which, because a building is deemed to be of particular historical importance, the Historic Preservation Commission is authorized to negotiate with the owners to formulate an economically feasible use for the property. See Ordinance No. 2970. § 7.b. Section 7.c. provides, in part, as follows:

In the event that the commission and the owner are unable to reach either an economically feasible plan for preservation or any other means of preserving the building, and unless in these circumstances the commission is satisfied that the proposed . . . alteration . . . will not materially impair the historic value of the structure, the commission shall reject the application.

at the time that the City's allegedly unauthorized actions were taken.

1. The Court's published opinion contains a more detailed statement of the facts of the case.

2. For the purposes of this argument, the parties properly refer to the state and local law in force

3. See H.W. Fowler, *Modern English Usage* 620-621 (3d ed.1983).



Applying § 7.c. in the present case, the Commission denied the Church's application for permission to demolish the Monastery after the Commission had "concluded that the structures at issue are of unusual importance and no economically feasible plan can be formulated for their preservation." (Parties' Stipulation and Agreement, Exh. 8 to City's Opp.)

[1] The Church argues that the enabling statute, Md. Ann. Code art. 66B, §§ 8.01 *et seq.*, does not authorize the City to adopt the rejection procedure set forth in § 7.c. of Ordinance No. 2970. Specifically, the Church argues that Article 66B, § 8.09 of the Maryland Code, which pertains to buildings deemed to be of unusual importance, precludes the City from rejecting applications for demolition where there is no economically feasible plan to preserve the property. The statute provides, in pertinent part, as follows:

(a) If an application is submitted for reconstruction or alterations affecting the exterior appearance of a structure ... the preservation of which the commission deems of unusual importance ..., the commission shall attempt with the owner of the structure to formulate an economically feasible plan for the preservation of the structure. Unless in these circumstances the commission is satisfied that the proposed [alteration] will not materially impair the historic value of the structure, the commission shall reject the application....

(b) If an application is submitted for reconstruction, alteration, or for moving or demolition of a structure that the commission deems of unusual importance and no economically feasible plan can be formulated, the commission shall have ninety days ... to negotiate with the owner and other parties in an effort to find a means of preserving the building.

Md. Ann. Code art. 66B, § 8.09. According to the Church, § 8.09 treats buildings for which there is no economically feasible means of preservation quite differently from buildings which can feasibly be preserved. The Church argues that the statute must be read to grant local commissions the authority to reject applications only if there is an economically feasible way to preserve the property.

According to the Church, § 8.09 requires local commissions to grant such applications if there is no economically feasible preservation plan. See Church's Reply at 16-20. The enabling statute, however, does not so provide, whether expressly or by necessary implication.

In subsection (a), § 8.09 provides that the city and property owners should attempt to formulate an economically feasible plan for the preservation of particularly important structures. The subsection further provides that, "under these circumstances," applications to modify important historic structures must be denied unless the commission is satisfied that the historic value of the structure will not be "materially impaired" by the proposed changes. § 8.09(a). In subsection (b), the statute authorizes local governments to provide an additional ninety days of negotiations between the owner and the city in those cases in which no economically feasible plan can be formulated.

Contrary to the Church's contentions, the statute simply does not provide that applications must be granted at the end of the ninety-day period if no plan is formulated. Neither is such a gloss on the statute "the only reasonable interpretation of the law," as the Church suggests. (Church's Reply at 19.) In sharp contrast to the General Assembly's explicit command that applications to make alterations must be denied if an economically feasible means of preserving the building can be found, the legislature is silent with regard to a local commission's choice of outcome when no such plan can be made. It is quite possible that the state would not wish to foreclose further actions on the part of local government to try to preserve important historic buildings by mandating that applications be granted at the end of the ninety day period.

The issue before the Court is whether Cumberland's zoning ordinances are illegal because the City has exceeded the legislative authority granted to it in Article 66B. The Cumberland Ordinance is consistent with the plain language of the enabling statute. Although the Church has identified some ambiguity in § 8.09 of Article 66B, the statute is silent on the precise point at issue. This

Court therefore declines to hold, as a matter of law, that the City of Cumberland violated Maryland law when it enacted Ordinance 2970. Accordingly, the Church's motion for summary judgment on Count IX will be denied.

*Count II: Free Exercise under the First Amendment*

The Church contends that the City of Cumberland's refusal to permit demolition of the Monastery impermissibly infringes upon its parishioners' right to the free exercise of the Catholic religion. Specifically, the Church argues as follows:

The Archdiocese of Baltimore and the Sts. Peter and Paul Parish have a religious obligation to place the spiritual needs of the faithful entrusted to their care above concern for the preservation of a dilapidated building.... Based on their religious beliefs regarding worship, ministry, education, association, and expression, Plaintiffs wish to demolish their Monastery.... Demolition of the Monastery is the cornerstone of the Parish's plans to improve worship at the Parish, to increase accessibility to worship and other religious services for the handicapped, elderly and other parishioners, and to use its property as an expression of religious belief.

(Church's Memo.Mot.Summ.J. at 8-9, citations to the record omitted.) In support of this position, the Church has submitted affidavits from several of its officials. These officials include the Reverend Monseigneur G. Michael Schleupner, the current Secretary of Management Services for the Archdiocese of Baltimore; the Reverend Vance Pastorius, O.F.M. Cap., pastor of Sts. Peter and Paul Parish; Cardinal Keeler; and Sister Rita Dressman, an Ursuline Sister and Director of Religious Education at Sts. Peter and Paul Parish.

The City characterizes the Church's evidentiary support as "a number of self-serving affidavits from various individuals as to the perceived impact upon them of the Historic Commission's decision to deny the certificate." (City's Opp. at 10.) The City seems to suggest that this Court should regard the affidavits with suspicion, in part because they

represent a subjective belief that there is a religious aspect to the Church's decision to demolish the Monastery.

Under the circumstances of this case, however, this Court has no authority to disregard the affiants' declaration of their beliefs. After all, what is the First Amendment about if not about one's subjective beliefs? (This Court has yet to encounter any objective beliefs.)

[2] As the Supreme Court emphatically stated in *Employment Division, Dept. of Human Resources of Oregon v. Smith*, 494 U.S. 872, 110 S.Ct. 1595, 108 L.Ed.2d 876 (1990) ("*Smith II*"), "[r]epeatedly and in many different contexts, we have warned that courts must not presume to determine the place of a particular belief in a religion or the plausibility of a religious claim." 494 U.S. at 887, 110 S.Ct. at 1604 (collecting Supreme Court cases). See also *Ferguson v. Commissioner of Internal Revenue*, 921 F.2d 588, 589 (5th Cir.1991) ("courts may not evaluate religious truth"). The courts must not judge the merits of statements of religious belief because "[r]eligious experiences which are as real as life to some may be incomprehensible to others." *United States v. Ballard*, 322 U.S. 78, 86, 64 S.Ct. 882, 886, 88 L.Ed. 1148 (1944). In a free exercise case that raises questions about the content of individuals' religious beliefs, therefore, a court may assess only the sincerity of the professed beliefs, and must leave aside the question of their truth. See *United States v. Seeger*, 380 U.S. 163, 184-185, 85 S.Ct. 850, 863-64, 13 L.Ed.2d 733 (1965). The City does not contend that the views expressed in the affidavits of the clergy and the parishioners are anything but sincere. Indeed, the record is entirely devoid of evidence that might support any such allegation. Consequently, the City's denial of the Certificate of Appropriateness infringes upon the Church's free exercise rights if the affidavits, taken as true, reveal that the demolition of the Monastery implicates elements of the Roman Catholic religion.

The Church in the present case asserts that Roman Catholic law, teaching and tradition require it to replace the old Monastery

with facilities more appropriate to its liturgical needs. Msgr. Schleupner, who holds a graduate degree in Canon Law, states in his affidavit that "the Monastery is ecclesiastical property that must be administered in pursuit of the proper ends of the Church." (Msgr. Schleupner Affid. ¶8, Exh. 1 to Church's Mot.Summ.J.). Under Canon Law, "[p]roperty may not be amassed for its own sake or to serve purely secular goals, but must be used to serve in meeting the spiritual needs of the people . . .", (*id.* at ¶9), and "[p]astors are religiously obligated to make substantive administrative and financial decisions based on the principles of worship, doctrine, and governance. . . ." (*Id.* at ¶15.) Because of Cumberland's refusal to issue the Certificate of Appropriateness, however, the Church cannot choose to demolish the Monastery and to release funds for the construction of more modern facilities. According to Msgr. Schleupner, "to be denied the capacity of making the concrete, practical choices that will most appropriately reflect the community's discernment of God's will is to be substantially burdened in the free exercise of an incarnational and sacramental religion" such as Catholicism. (*Id.* at ¶20.)

In a similar vein, Father Pastorius testified that his "decision and the decision of the Parish to seek demolition of the Monastery as soon as possible was motivated and compelled by religious belief." (Rvd. Pastorius Affid., ¶11, Exh. 2 to Church's Mem.Mot.Summ.J.) Cardinal Keeler stated that "the construction and renovation plans for the Sts. Peter and Paul Parish are motivated by our sincerely-held Catholic beliefs regarding worship, ministry, association, education, expression and church administration." (Cardinal Keeler Affid., ¶3, Exh. 3 to Church's Mem.Mot.Summ.J.) Sister Rita, a member of the Parish Restoration Committee, stated that the Committee had determined that "the mission of the Parish could only be fulfilled through . . . the demolition of the Monastery and construction of a church annex, gardens and parking." (Rita Dressman Affid., ¶4, Exh. 6 to Church's Mem.Mot.Summ.J.) Numerous parishioners also submitted affidavits explaining that the existing buildings fail to satisfy the needs of the congregation, and that the new construction is crucial to the

spiritual growth of the parish. See, e.g., Affidavit of Richard Michels, II, Exh. 4 to Church's Mem.Mot.Summ.J. (existing facilities offer insufficient privacy for the sacrament of reconciliation); affidavit of Peggy Ruppenkamp, Exh. 5 to same (lack of space for religious education programs); affidavit of Sandra Crabtree, Exh. 7 to same (no place for prayer or gatherings before weddings, baptisms and funerals); affidavit of Elizabeth Ann Dyer, Exh. 8 to same (lack of parking facilities decreases participation in worship services); and affidavit of Freida R. Spriggs, Exh. 10 to same (lack of nursery prevents parents with young children from participating fully in Mass).

[3] The affidavits clearly describe a sincerely-held belief that the Monastery must be demolished and replaced as part of the Church's Roman Catholic mission. This Court is not empowered to question the validity of that belief. Under the circumstances, the Church has established, as a matter of law, that its decision to demolish the Monastery involves the exercise of the Roman Catholic faith and implicates First Amendment free exercise principles.

[4] The First Amendment to the United States Constitution prohibits the government from legislating "an establishment of religion or prohibiting the free exercise thereof." U.S. Const. amend. I. The constitutionality of government regulation that burdens religious practice depends to a large extent upon the neutrality of the regulation with respect to religion, and upon the state's commitment to uniform enforcement of its law. Thus, "a law that is neutral and of general applicability need not be justified by a compelling governmental interest even if the law has the incidental effect of burdening a particular religious practice." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531, 113 S.Ct. 2217, 2226, 124 L.Ed.2d 472 (1993) (citing *Smith II*). By contrast,

[a] law burdening religious practice that is not neutral or not of general application must undergo the most rigorous of scrutiny. To satisfy the commands of the First Amendment, a law restrictive of religious practice must advance "interests of the

highest order' and must be narrowly tailored in pursuit of those interests.

*Church of the Lukumi Babalu Aye*, 508 U.S. at 546, 113 S.Ct. at 2233.

In the present action, the City contends that, under the principles set forth in *Smith II*, it has no obligation to treat the Church differently from any other owner of property when enforcing its historic preservation regulations. By contrast, the Church alleges that *Smith II* does not govern this case, because Cumberland's historic preservation ordinance is not a "neutral, generally applicable regulatory law." *Smith II*, 494 U.S. at 880, 110 S.Ct. at 1601. Consequently, according to the Church, Cumberland must invoke a compelling governmental interest to justify its refusal to issue the Certificate of Appropriateness.

In *Smith II*, the Supreme Court held that Oregon could give effect in unemployment compensation proceedings to its criminal law prohibiting the possession of controlled substances, despite that law's effect on individuals' free exercise rights. Individuals seeking unemployment compensation in *Smith II* had lost their jobs with a drug rehabilitation organization because they used peyote, a controlled substance, for sacramental reasons. The unemployment claimants asserted that because peyote use was part of the exercise of their religion in the Native American Church, Oregon could not constitutionally prohibit their use of peyote without a compelling governmental interest.

The Supreme Court, however, declined to follow *Sherbert v. Verner*, 374 U.S. 398, 83 S.Ct. 1790, 10 L.Ed.2d 965 (1963), *Thomas v. Review Bd. of Indiana Employment Security Div.*, 450 U.S. 707, 101 S.Ct. 1425, 67 L.Ed.2d 624 (1981), and *Hobbie v. Unemployment Appeals Comm'n of Florida*, 480 U.S. 136, 107 S.Ct. 1046, 94 L.Ed.2d 190 (1987), three cases which had held a compelling interest standard applicable to government regulation that infringed upon free exercise rights. All three cases had "invalidated state unemployment rules that conditioned the availability of benefits upon an applicant's willingness to work under conditions forbidden by his religion." *Smith II*, 494 U.S. at 883, 110 S.Ct. at 1602. Con-

cluding that the *Sherbert* compelling interest test had been "developed in a context that lent itself to individualized governmental assessment of the reasons for the relevant conduct," the Court in *Smith II* distinguished the prior unemployment cases as having "nothing to do with an across-the-board criminal prohibition on a particular form of conduct." 494 U.S. at 884, 110 S.Ct. at 1603. The Court held that where a state uniformly enforces a neutral law of general applicability, the state need not identify a compelling interest served by its legislation. By contrast, "where the State has in place a system of individualized exemptions, it may not refuse to extend that system to cases of 'religious hardship' without compelling reason." *Ibid.*, (quoting *Bowen v. Roy*, 476 U.S. at 708, 106 S.Ct. at 2156). Consequently, to the extent that Cumberland's historic zoning laws provide for a "system" of exemptions and exceptions, the free exercise analysis requires application of principles other than those set forth in *Smith II*.

Cumberland City ordinance No. 2970 provides for the establishment of a Historic Preservation Commission. Ordinance 2970, § 3. The Commission is empowered to designate historic districts. *Id.*, § 5. In addition, a Certificate of Appropriateness must be sought and received from the Commission before any person may "commence[ ] any reconstruction, alteration or removal of any exterior feature, or commence[ ] any change in the exterior color ... or commence[ ] the demolition of any structures ... in any Architectural and Historic Preservation District." *Id.*, § 6.a. If the application for alteration or demolition involves "a structure, the preservation of which the commission deems of unusual importance to the City, State or nation," and if no economically feasible plan can be formulated for preservation, then the Commission is empowered to negotiate with the property owners and others in an attempt to preserve the building. *Id.*, § 7.b. Should no such agreement be reached, the Commission must reject the application. *Id.*, § 7.c. Section 7.d., however, lists several circumstances which may sus-

pend the Commission's obligation to reject a § 7.b. application:

[T]he commission may approve [a] proposed reconstruction or alteration despite the fact the changes come within the provisions of Sections b. and c. above if:

- (1) The structure is a deterrent to a major improvement program which will be of substantial benefit to the City of Cumberland;
- (2) Retention of the structure would cause undue financial hardship to the owner; or
- (3) The retention of the structure would not be to the best interest of a majority of persons in the community.

Ordinance 2970, § 7.d.

Clearly, Cumberland's Historic Preservation Ordinance is significantly different from the "across-the-board criminal prohibition on a particular form of conduct" sustained in *Smith II*. Rather, like the unemployment compensation programs at issue in *Sherbert, Thomas and Hobbie*, the ordinance "has in place a system of individual exemptions." *Smith II*, 494 U.S. at 884, 110 S.Ct. at 1603. The ordinance embodies a legislative judgment that the City's interest in historic preservation should, under certain circumstances, give way to other interests, such as furthering major development and protecting property owners from financial hardship. *Smith II* recognized that where the government enacts a system of exemptions, and thereby acknowledges that its interest in enforcement is not paramount, then the government "may not refuse to extend that system [of exemptions] to cases of 'religious hardship' without compelling reason." 494 U.S. at 884, 110 S.Ct. at 1603 (quoting *Bowen v. Roy*, 476 U.S. 693, 708, 106 S.Ct. 2147, 2156, 90 L.Ed.2d 735 (1986)). Accordingly, the City's zoning regulation is not entitled to enforcement under the principles set forth in *Smith II*. As a "law restrictive of religious practice," the City of Cumberland's Historic Preservation Ordinance must instead "advance interests of the highest order" and be narrowly tailored in pursuit of those inter-

ests." *Church of Lukumi Babalu Aye*, 508 U.S. at 546, 113 S.Ct. at 2233.

[5] The City of Cumberland's purposes in enacting Ordinance No. 2970 are stated to be "safeguarding the heritage of the City ...; stabilizing and improving property values ...; fostering civic beauty; strengthening the local economy; and promoting the use and preservation of historic districts and/or sites for the education, welfare and pleasure of the residents of the City." Ord. No. 2970, § 1.a. In its opposition to the Church's summary judgment motion, the City nowhere asserts that historic preservation is a compelling interest of government.<sup>4</sup> Courts and commentators are apparently unanimous in opining that it is not. See, e.g., *First Covenant Church v. City of Seattle*, 120 Wash.2d 203, 840 P.2d 174, 185 (1992) (government's "interest in preservation of esthetic and historic structures is not compelling"); *Society of Jesus of New England v. Boston Landmarks Comm'n*, 409 Mass. 38, 564 N.E.2d 571 (1990) ("[t]he governmental interest in historic preservation, though worthy, is not sufficiently compelling to justify restraints on the free exercise of religion, a right of primary importance"); 79 Opp.Att'y.Gen. — (Md.1994) (Opinion No. 94-037, reprinted in 21 Maryland Register 1600, 1606, Vol. 21, Sept. 16, 1994) (observing that no case upholding historic zoning "suggests that the governmental interests underlying such laws are 'compelling,'" and concluding that they are not); Thomas Pak, *Free Exercise, Free Expression and Landmarks Preservation*, 91 Colum.L.Rev. 1813, 1845 (1991) ("although the goals of landmarks preservation are valid state interests ... they do not rise to the level of more traditional justifications for compelling state interests ..."). In light of these authorities, this Court holds that the City of Cumberland has failed to assert a compelling state interest in support of its Historic Preservation Ordinance.

[6] Accordingly, the Court holds, as a matter of law, that the City's refusal to grant the Church a Certificate of Appropriateness for the demolition of its monastery impermis-

compelling interest standard.

4. Rather, the City's argument was that the *Smith II* standard governs the case, rather than the

sibly violates the Church's right to the free exercise of religion protected by the First Amendment. The Church is therefore entitled to summary judgment on Count II of the complaint.

*Count III—Free Exercise under  
the Maryland Declaration  
of Rights*

The Church asserts that its free exercise claim under Article 36 of the Maryland Declaration of Rights also requires the City to assert a compelling state interest in support of its refusal to grant the Certificate of Appropriateness. The Church bases its argument upon Maryland law. See Church's Mem.Mot.Summ.J. at 19-21 (citing, *inter alia*, *Barghout v. Mayor & City Council*, 325 Md. 311, 600 A.2d 841 (1992), and *McMillan v. State*, 258 Md. 147, 265 A.2d 453 (1970)). The Church points out in its memorandum both that the language of Article 36 is entirely different from the language of the First Amendment, and that the Court of Appeals in *Barghout* interpreted Article 36 without reference to any cases decided under that provision's federal counterpart.<sup>5</sup> The City, however, responds that Article 36 of the Maryland Declaration of Rights should be construed *in pari materia* with the First Amendment, and that application of the compelling interest standard to the present case is therefore inappropriate.

In light of this Court's disposition of the Church's cause of action under the First Amendment, it is unnecessary for the Court to determine the relationship between the First Amendment, as interpreted by *Smith II*, and Article 36 of the Maryland Declaration of Rights. Because the holding of *Smith II* does not directly govern this action, the City must assert a compelling governmental interest for its restriction of the plaintiffs' free exercise rights regardless of whether Article 36 is to be read *in pari materia* with the First Amendment or whether it indepen-

dently requires strict scrutiny of government action. Because the compelling interest test applies under either view of Maryland law, it would be inappropriate for this Court to decide whether, or to what extent, the Court of Appeals of Maryland would find *Smith II* pertinent to the construction of Article 36 of the Maryland Declaration of Rights. "It is axiomatic that questions of state constitutional law are to be answered by state courts, rather than by the federal judiciary." *Green v. Zendrian*, 916 F.Supp. 493, 498 (D.Md. 1996).

Because the City's infringement of the plaintiffs' free exercise rights is prohibited by Article 36 of the Maryland Declaration of Rights unless it is justified by a compelling governmental interest, and because the City has failed to allege such a compelling interest, the plaintiffs are entitled to summary judgment on Count III of their complaint.

*Counts VI and VII—Takings under the  
Fifth & Fourteenth Amendments and  
under Article III, § 40 of the Constitu-  
tion of Maryland*

The Church alleges that the City's refusal to issue the Certificate of Appropriateness for the demolition of the Monastery requires it to preserve and maintain the Monastery, amounting to an unconstitutional taking of property without just compensation. The Church alleges violations of both the Fifth Amendment to the United States Constitution, as incorporated against the states through the Fourteenth Amendment, and of Articles 19 and 24 of the Maryland Declaration of Rights, the state due process clauses. (Cmplt., Counts VI and VII). Although the Church does not allude to it, Article III, § 40 of the Maryland Constitution specifically prohibits the enactment of state legislation "authorizing private property[] to be taken for public use, without just compensation ... being first paid or tendered to the party entitled to such compensation." The

5. Article 36 of the Maryland Declaration of Rights provide, in pertinent part, as follows:

That as it is the duty of every man to worship God in such manner as he thinks most acceptable to Him, all persons are equally entitled to protection in their religious liberty; wherefore, no person ought by any law to be molested in

his person or estate, on account of his religious persuasion, or profession, or for his religious practice, unless, under the color of religion, he shall disturb the good order, peace or safety of the State, or shall infringe the laws of morality, or injure others in their natural, civil or religious rights....



Court of Appeals of Maryland has long held that the federal and state takings clauses "have the same meaning and effect in reference to an exaction of property, and that the decisions of the Supreme Court on the Fourteenth Amendment are practically direct authorities" for the construction of state takings claims. *Bureau of Mines of Maryland v. George's Creek Coal & Land Co.*, 272 Md. 143, 156, 321 A.2d 748 (1974). See also *Maryland Aggregates Ass'n, Inc. v. State*, 337 Md. 658, 682-686, 655 A.2d 886 (1995), and cases there cited. Accordingly, the same body of law governs both Count VI and Count VII.

[7] State regulation of property amounts to a taking "where regulation denies all economically beneficial or productive use of land." *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1015, 112 S.Ct. 2886, 2893, 120 L.Ed.2d 798 (1992). See also *Maryland Aggregates*, 337 Md. at 684, 655 A.2d 886. To amount to a taking, the challenged state regulation must do more than place an economic strain on the landowner; it must "leave his property economically idle," *Lucas*, 505 U.S. at 1019, 112 S.Ct. at 2896, or render the property "essentially valueless by government action," *Maryland Aggregates*, 337 Md. at 684, 655 A.2d 886.

[8] The City's refusal to grant the Church a Certificate of Appropriateness for the demolition of the Monastery requires the Church to maintain the Monastery at a safe standard of repair. (See Letter of September 5, 1995 from William J. Flanigan, Building Engineer of the City of Cumberland, to Rev. Vance Pastorius, Attachment G to Exh. 2 to Church's Mot.Summ.J., stating that the City "shall immediately require of the owner ... protective maintenance and repair" of dilapidated buildings.) The buildings are undoubtedly in a state of serious disrepair. (See photographs, Attachment D to Exh. 2 to Church's Mot.Summ.J., showing condition of the buildings.) The cost to "retain and adequately maintain" the shell of the structures and to add sufficient heating "to maintain minimal building interior temperatures to prevent further deterioration" was estimated by Taylor Architects, Inc. to be \$386,440. (Letter of November 30, 1995, from Brendan

B. Taylor to Rev. Pastorius, Attachment C to Exh. 2 to Church's Mot.Summ.J.) The cost of complete renovation of the Monastery and other buildings was estimated by the Church at "\$2,000,000 plus dollars," and by Mary Miltenberger, the President of the Preservation Society and an opponent of the proposed demolition, at \$1,100,000. (Transcript of Testimony before the Historic District Commission [sic] at 31 & 58.) In light of the high cost of all proposed renovations, the City has stipulated that "no economically feasible plan can be formulated" for the preservation of the Church buildings. Under these circumstances, there is no doubt that the application of Cumberland Historic Zoning Ordinances to the Church has rendered the Church property economically useless, and has worked a regulatory taking. Consequently, the Church is entitled to a declaratory judgment that the City's refusal to issue the Certificate of Appropriateness is unconstitutional.

[9, 10] The Fifth Amendment, however, "is designed not to limit the governmental interference with property rights *per se*, but rather to secure compensation in the event of otherwise proper interference amounting to a taking." *First English Evangelical Lutheran Church of Glendale v. Los Angeles County*, 482 U.S. 304, 315, 107 S.Ct. 2378, 2385-86, 96 L.Ed.2d 250 (1987) (emphasis in the original). As a result, "when just compensation for the taking is provided ..., the taking ceases to be illegal and the fixing of just compensation ... puts an end to the controversy." 8 Nichols on Eminent Domain, § 14E.01, 14E-4 (3d ed.1996). Accordingly, the proper remedy for an unconstitutional taking is not an injunction against the government or an order seeking relief from the regulation, but damages. See generally *First Lutheran*, 482 U.S. at 314-322, 107 S.Ct. at 2385-90. In addition to requesting both a declaratory judgment and an order directing the City to issue the Certificate of Appropriateness, the Church has asked for damages "in an amount to be determined." (Cmplt., Prayer for Relief, subsection (f).)

In its complaint the Church made a general request for relief in the form of damages, but it did not ask for damages in its sum-

mary judgment motion. Furthermore, the Church's proposed "Order" submitted in connection with the summary judgment motion only requires the City to issue the Certificate of Appropriateness and to pay attorneys' fees. No mention is made of money damages. Nevertheless, the Church has not expressly disavowed its earlier request for damages, and this Court must give it the opportunity to establish its right to compensatory relief, should it so desire. Of course, damages may only be calculated with respect to the actual loss of use experienced by the Church. *See generally First Lutheran*, 482 U.S. at 318-320, 107 S.Ct. at 2387-89. Any issue of future damages is mooted by this Court's finding that the defendants cannot constitutionally continue to require the Church to maintain the property. Because the Church has not presented any evidence that it has yet suffered any provable or compensable economic loss, this Court's Order will offer the Church an opportunity to establish a right to money damages if it elects to do so.



Cynthia L. WENZLAFF, Plaintiff,

v.

NATIONSBANK, Defendant.

No. AW-96-1961.

United States District Court,  
D. Maryland.

Oct. 18, 1996.

Former employee brought suit against employer, alleging that following her return from leave and as a result of her pregnancy, she was discriminated against in violation of the Americans with Disabilities Act (ADA), the Pregnancy Discrimination Act (PDA), and the Family and Medical Leave Act (FMLA). On employer's motion to dismiss, the District Court, Williams, J., held that: (1)

pregnancy is not a "disability" within meaning of the ADA; (2) allegation that employee violated the PDA stated a claim; (3) no violation of the FMLA was possible after termination of employee-employer relationship; and (4) FMLA claim was time-barred.

Granted in part and denied in part.

#### 1. Civil Rights § 107(1)

Pregnancy is not a "disability" within meaning of the ADA. Americans with Disabilities Act of 1990, § 2 et seq., 42 U.S.C.A. § 12101 et seq.

See publication Words and Phrases for other judicial constructions and definitions.

#### 2. Civil Rights § 173.1

No violation of the Family and Medical Leave Act (FMLA) is possible after termination of employee-employer relationship; statutory language explicitly limits scope of the FMLA violation to interactions between individuals sharing an employer-employee relationship at time of alleged violation. Family and Medical Leave Act of 1993, § 2 et seq., 29 U.S.C.A. § 2601 et seq.

Stanley Derwin Brown, McCarthy, Bacon & Costello, Lanham, MD, for Cynthia L. Wenzlaff.

Steven David Frenkil, Brooks R. Amiot, Miles & Stockbridge, Baltimore, MD, for NationsBank.

#### MEMORANDUM OPINION

WILLIAMS, District Judge.

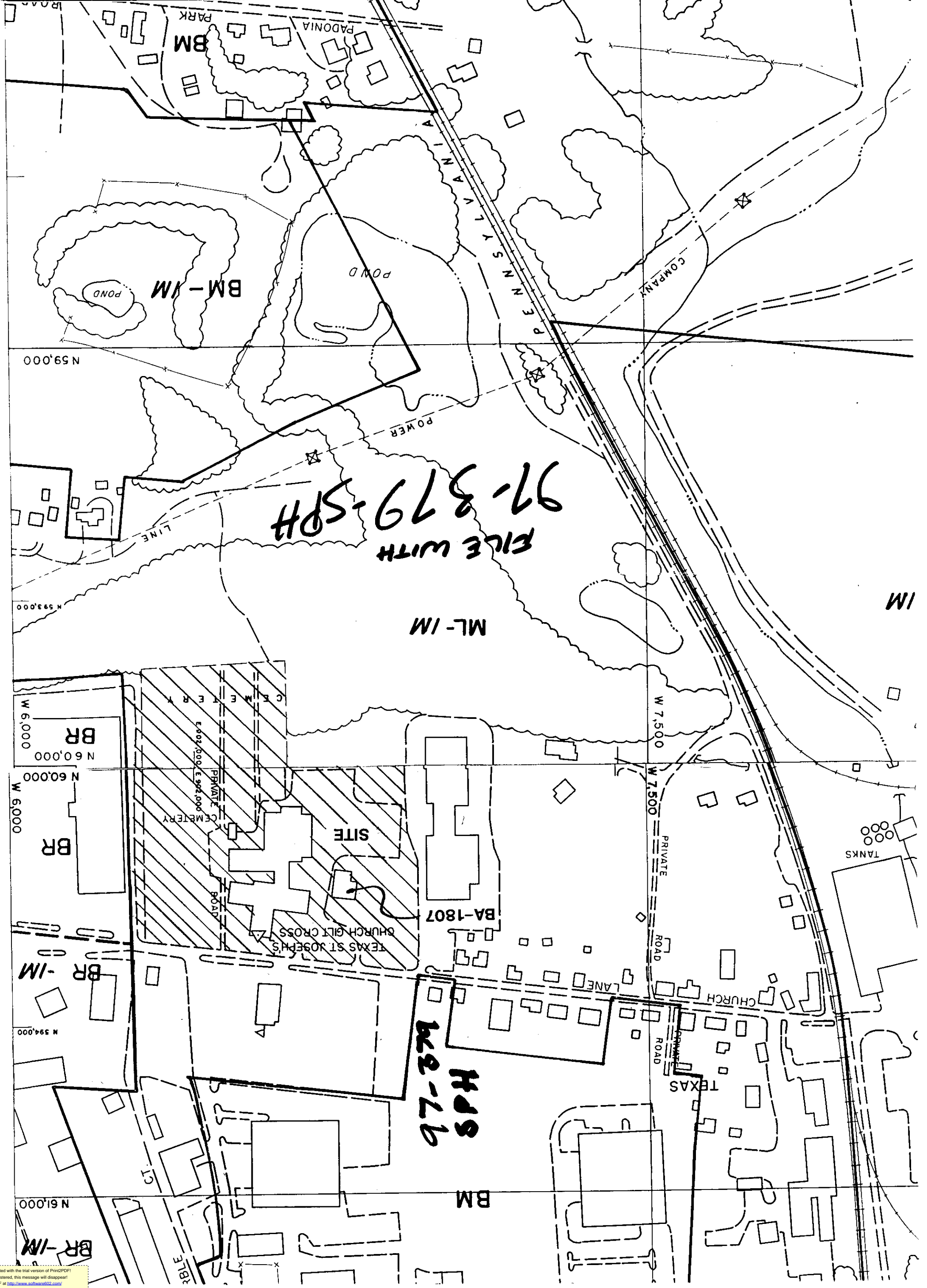
Presently pending before the Court is Defendant's Motion to Dismiss the Complaint, filed pursuant to Rule 12(b) of the Federal Rules of Civil Procedure. Plaintiff has agreed to a voluntary dismissal of Counts IV and V of the complaint, without prejudice. The Court will therefore address only Counts I, II, and III.

#### Background

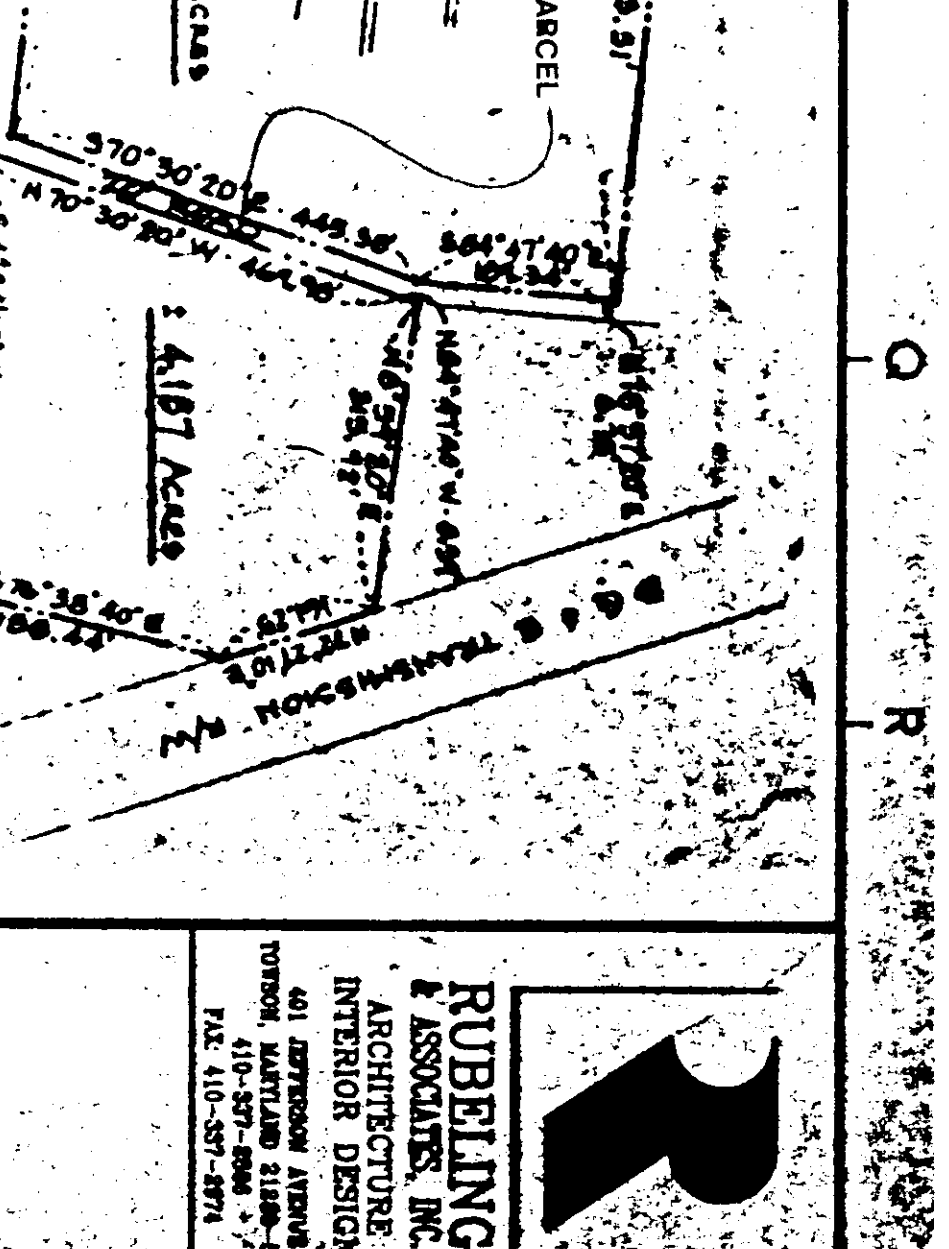
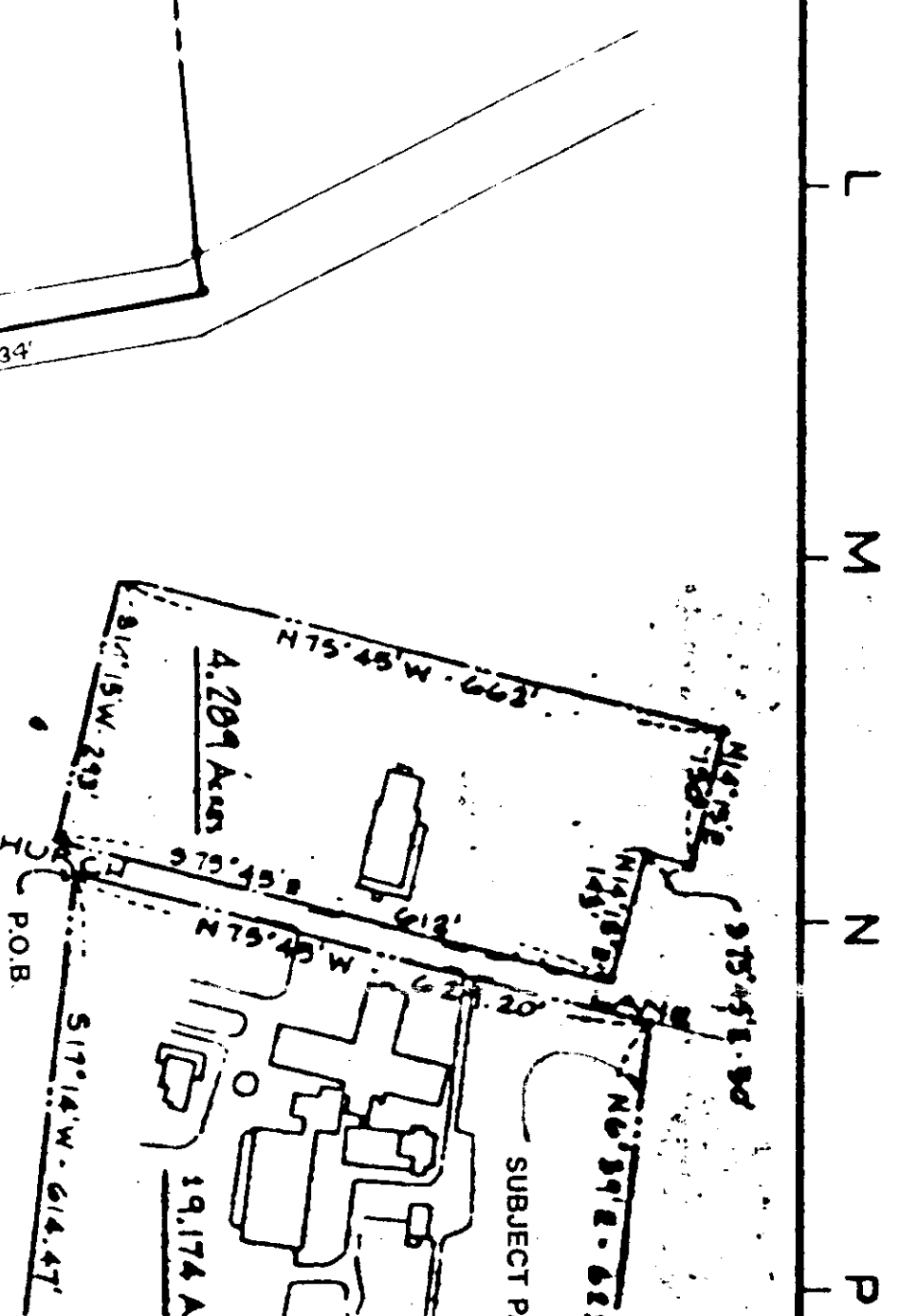
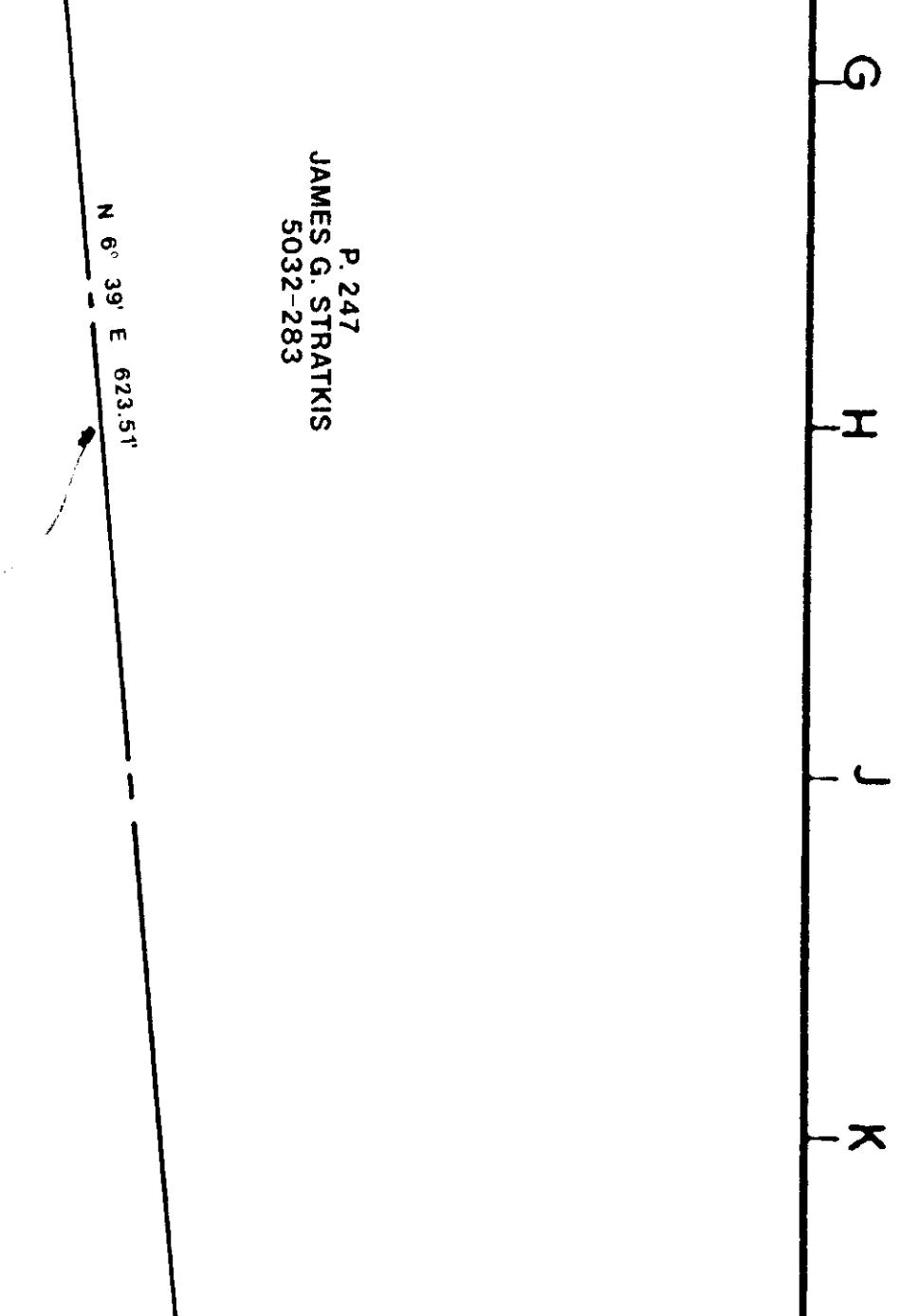
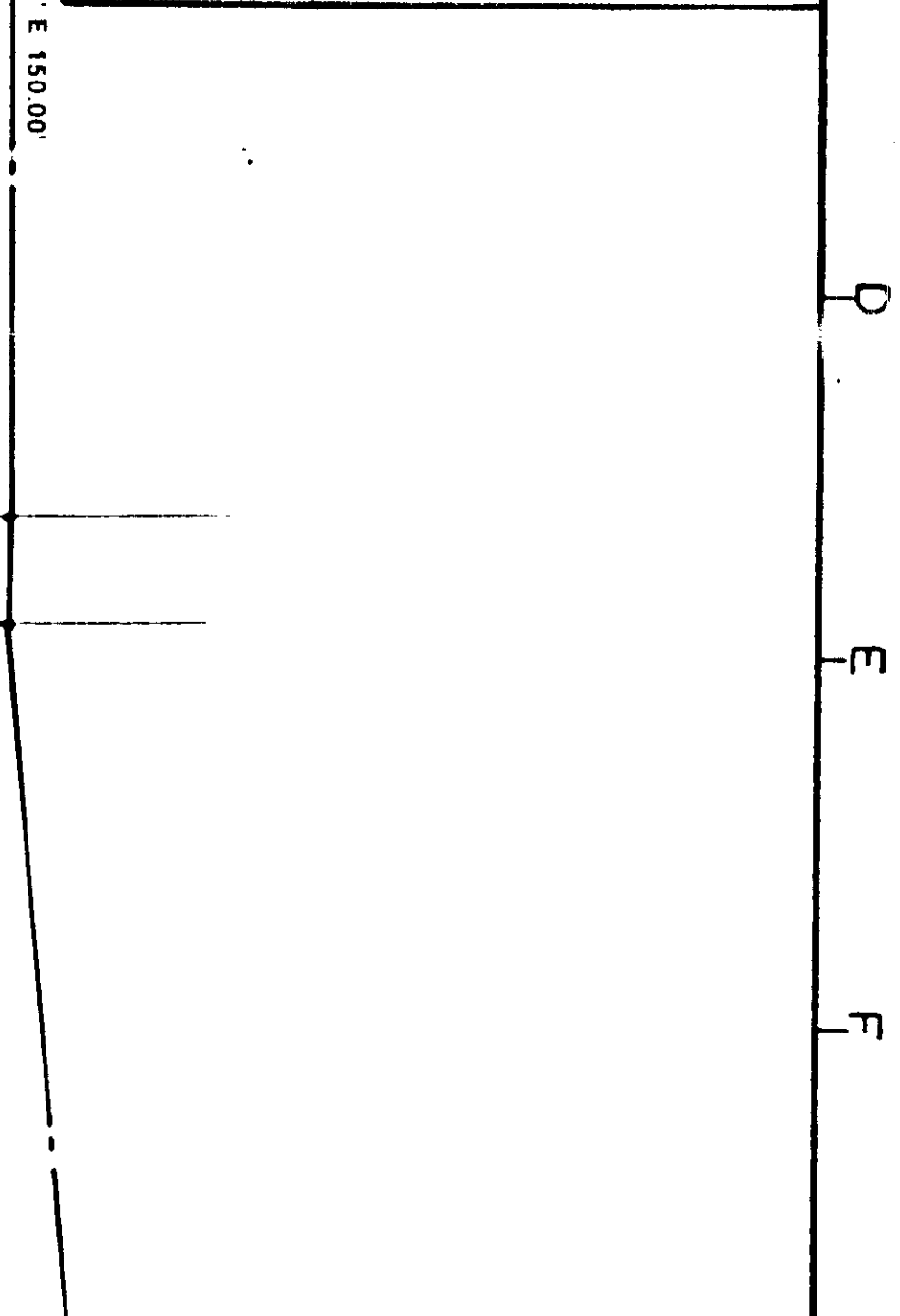
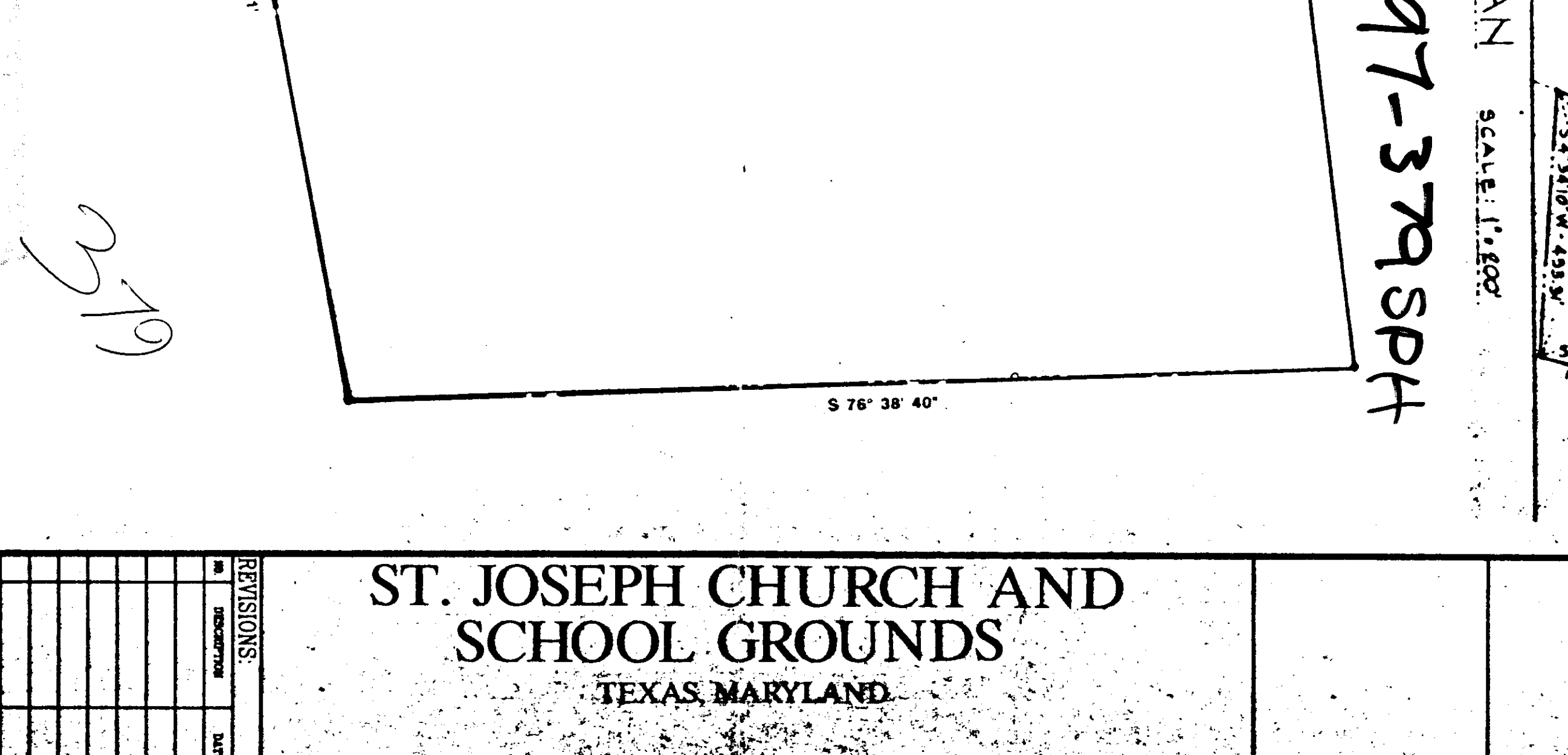
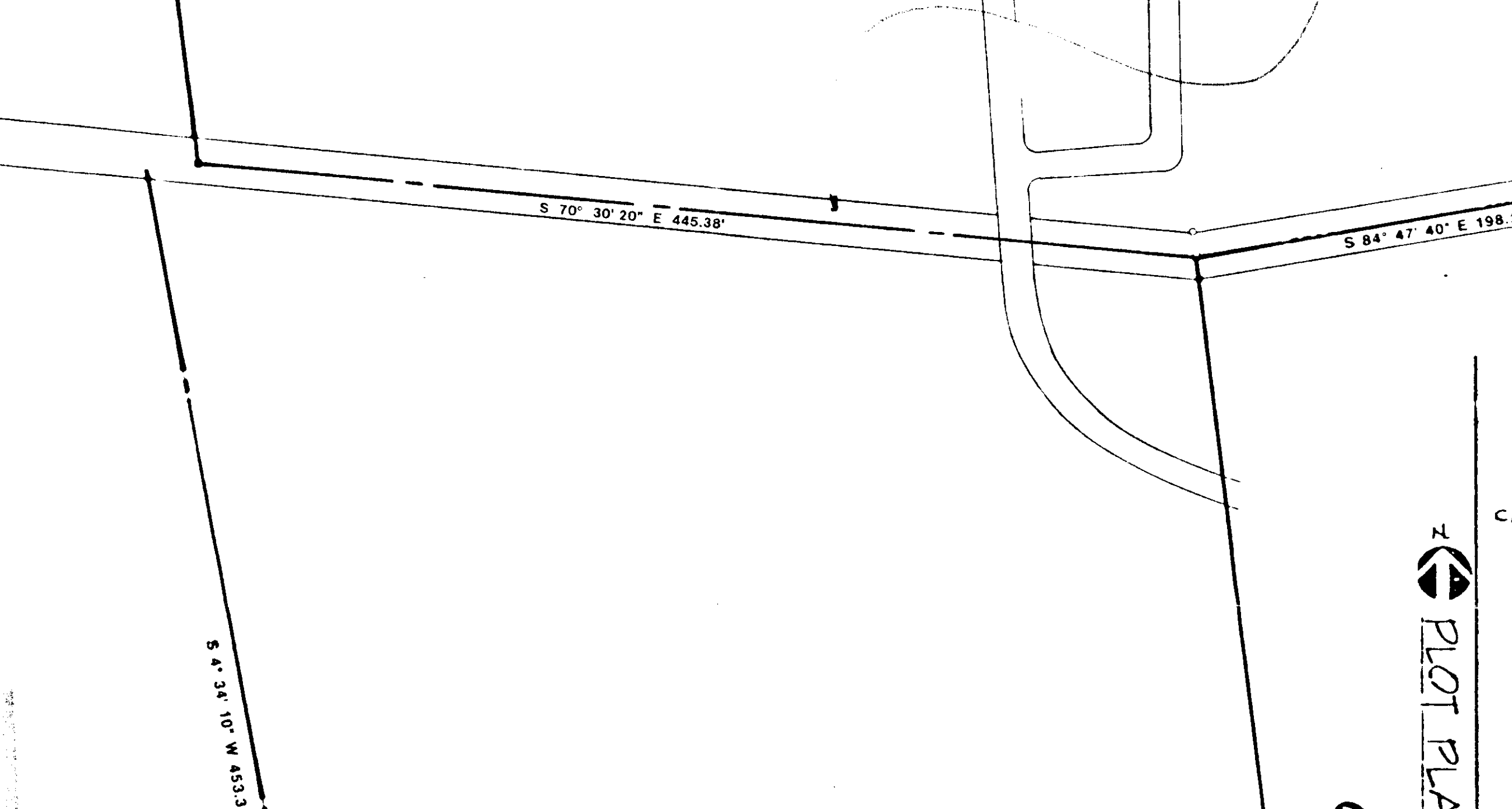
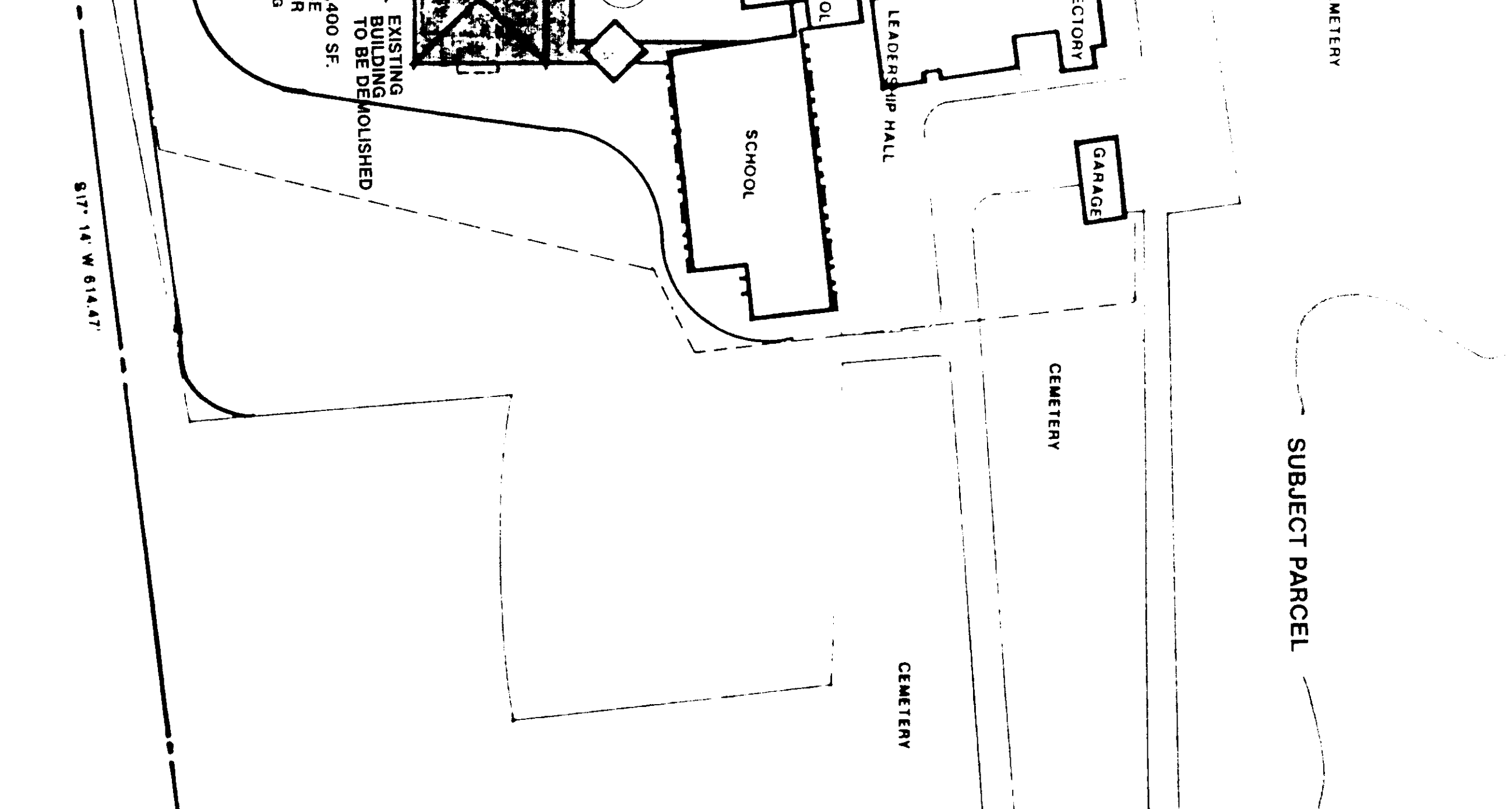
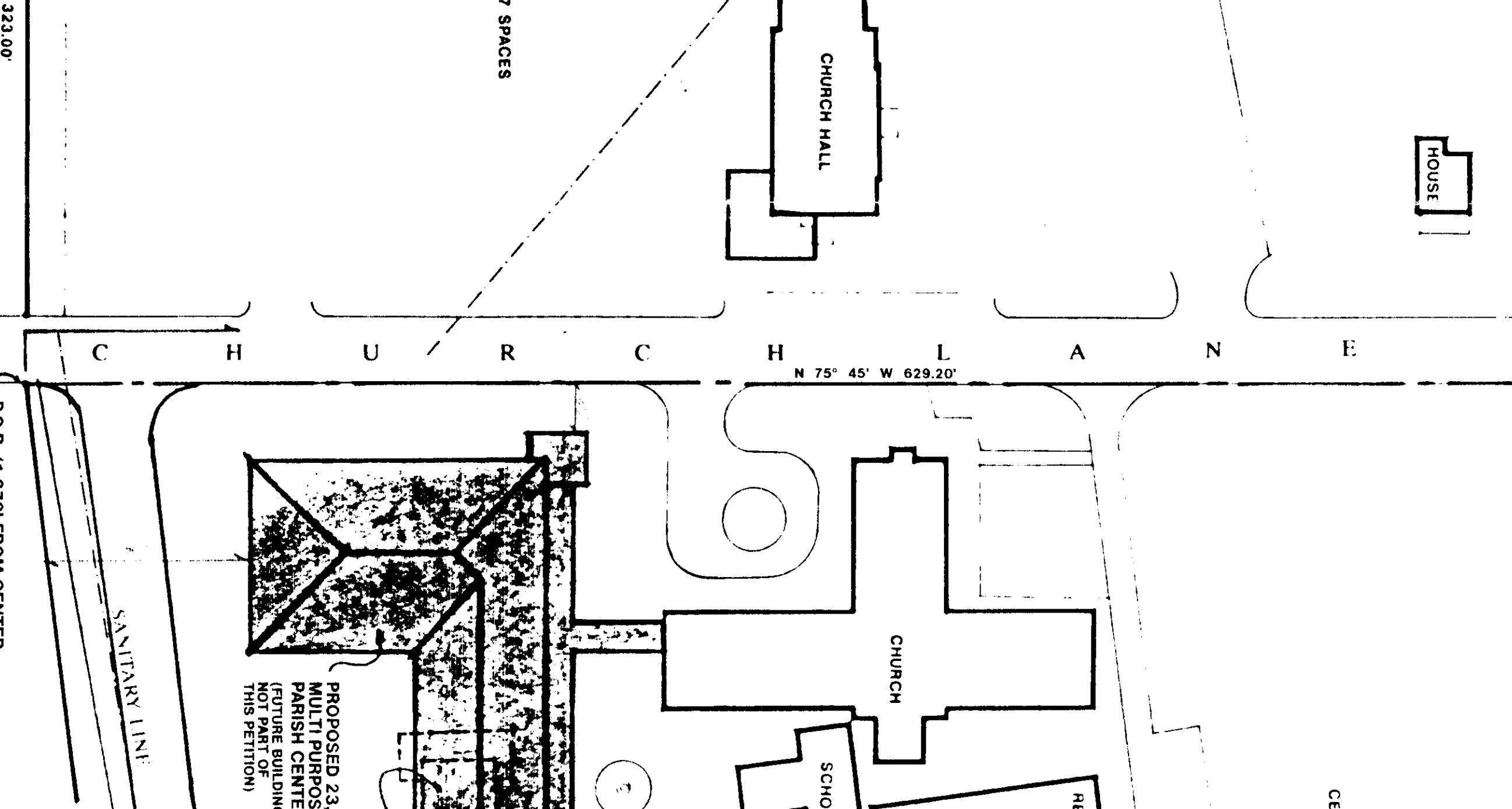
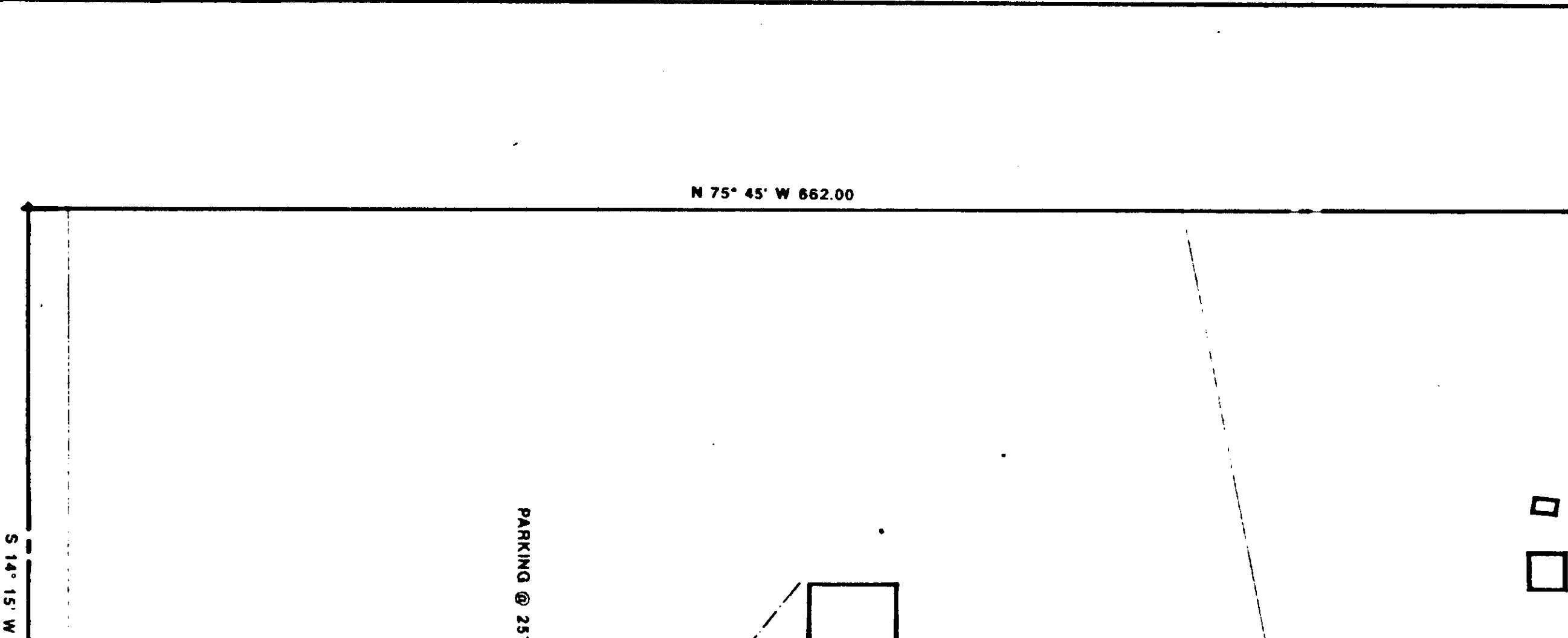
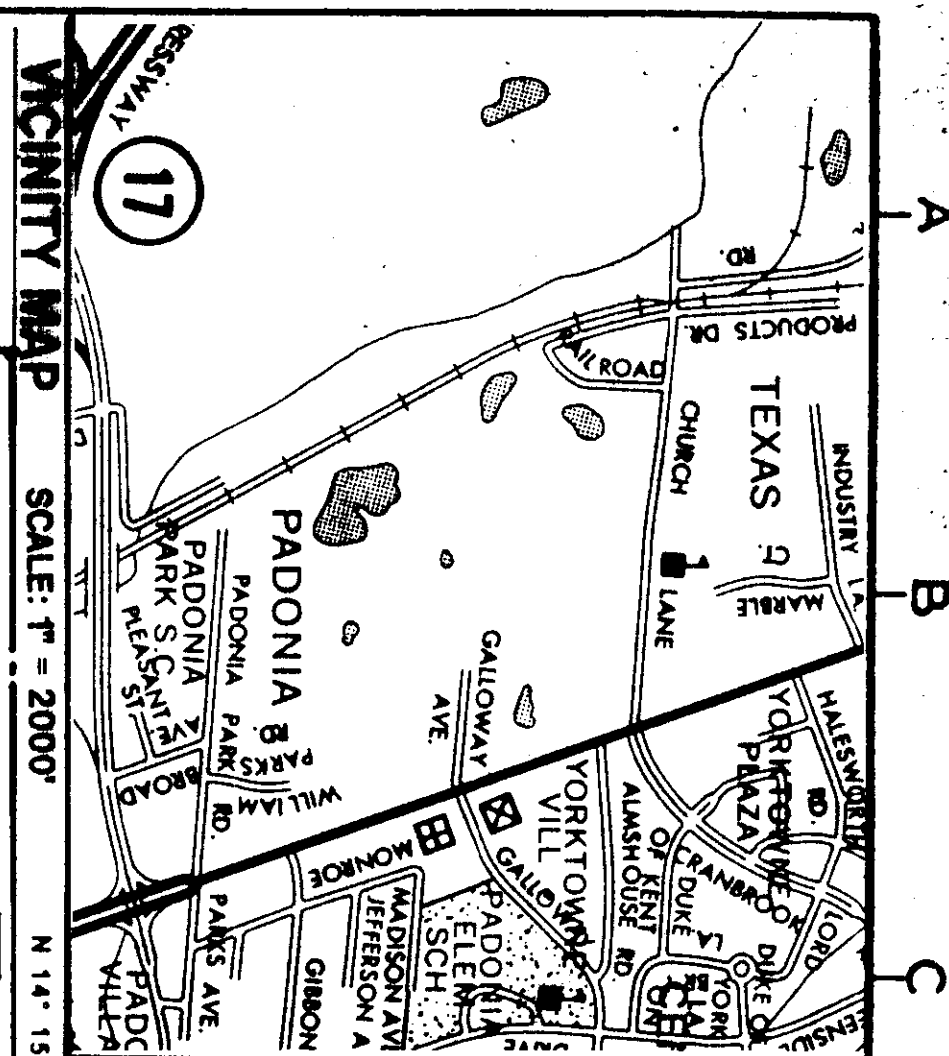
This suit arises from the events that followed Plaintiff's taking disability leave from



<b>DATE:</b> 2-20-97 <b>SCALE:</b> 1"=200' <b>PROJECT:</b> NW-16-B		<b>DRAWN BY:</b> [blank] <b>DESIGN BY:</b> [blank] <b>REVIEW BY:</b> TEM <b>JOB NO:</b> 18570	
<b>MORRIS &amp; RITCHIE ASSOCIATES, INC.</b> ENGINEERS, PLANNERS, SURVEYORS, AND LANDSCAPE ARCHITECTS 110 WEST PARK TOWSON, MARYLAND 21204 TEL: 410 821-1690 FAX: 410 821-1748		<b>BALTIMORE COUNTY</b> <b>ZONING MAP</b> <b>ST. JOSEPH CHURCH</b> <b>AND SCHOOL GROUNDS</b>	







8 SITE DATA

1. OWNER: ST. JOSEPH PARISH/COOPERATIVE  
ATLIM MONSIEUR PAUL & COOK, PASTOR

2. PROPERTY ADDRESS: 101 CHANDLER AVE  
COOPERATIVE, MO 21000

3. TAX ACT #: 101 CHANDLER AVE  
ELECTION DIST: 8  
TAX MAP PARCEL: 8  
BLD #/STORY: 285  
BLD #/STORY: 1  
CONTRACTOR: 101 CHANDLER AVE  
CONTRACT NO.: 304

4. EXISTING TOILET: 304

5. PLUMBING BY: NORMAN & SONS, LANDSCAPERS, INC.  
TOWNSHIP, LAMAR, MO, STATE 105  
118 WEST ROUTE 1  
ATLIM MONSIEUR

6. EXISTING ACRES: 3.174

7. EXISTING ZONING: M-40  
EXISTING USE: CHURCH

8. PLUMBING DATE:

9. INSURANCE: 400 SEATS AT 1100 & SEATS 1 - 100 \$50000  
PROPERTY, 200 \$5000

10. THE PURPOSE OF THIS PROJECT IS TO  
REAR  
FROM  
THE  
THE SEWER TREATMENT  
THREAT LIFT (B) NO  
LIFTING LIFT

11. THE EXISTING SEWER  
LIFTING LIFT

12. THIS PROJECT, HEAD  
FOR NEW CONSTRUCTION  
IF APPROVAL IS GRANTED  
LIMITED RELOCATION  
REPLACEMENT AND PRO  
23,400 BT PAVEMENT

13. ZONING HISTORY:  
SOUTHWEST  
SOUTHWEST

14. REQUIRED RETURN:

[illegible]

P 243  
JOHN STRSIAK  
7844/771

\* 11-11-77  
THE MARTIN O'HARA  
(NOW A CONVENT B...

HOUSE, 101 CHURCH LANE  
N 1807), TO BE DEMOLISHED

**PLAN TO ACCOMPANY P  
FOR SPECIAL HEARING**

**MORRIS**  
BROOKS

LAST REV. \_\_\_\_\_  
PROJECT NO. 45-01  
DATE 11-20-97  
SCALE 1/4" = 1'-0"  
TITLE  
SITE PLAN  
SHEET \_\_\_\_\_  
1 OF 1

PARKING @ 23

233.00'

C H U R

SANITARY LINE

PROPOSED 3300 SOUTH MAIN STREET MULTI-PURPOSE PARISH CENTRE (FUTURE BUILDING NOT PART OF THIS PETITION)

SPACES

S 47° 36' 10" W 453.3'

S 70°

[illegible]

N 75° 45' W 662.00

CHURCH HALL

CHURCH

SCHOOL

N 75° 45' W 629.20'

S 76° 38' 40"

PH CHURCH AND  
OOL GROUNDS  
TEXAS, MARYLAND

[illegible]

P 247  
JAMES G. STRATVIS  
5032-283

N 6° 39' E 623.57'

METERY

SUBJECT PARCEL

**ARCHITECTURE**  
**INTERIOR DESIGN**  
TUTORIAL MARTINUS SLIDE  
STATIONERY  
FAX 108-9678774

This map shows York Township, Michigan, situated between Muskegon County to the north and Allegan County to the south. To the west is Benzie County, and to the east is Ottawa County. Major transportation routes include M-66 running north-south through the center, I-94 running east-west along the southern border, and US-10 running east-west along the northern border. Key locations labeled include Cadillac, Gaylord, Elk Rapids, and Spring Lake. The map also depicts several smaller towns and villages within the township, such as Yorkville, Grand Haven, and Spring Lake Heights. Water bodies like Lake Michigan are shown to the north and east.

A vertical line with three small horizontal tick marks and three small circles. The tick marks are located at the top, middle, and bottom of the line. The circles are located at the top, middle, and bottom of the line.

A vertical line with four points labeled G, H, J, and K from top to bottom.

An aerial photograph of a city block. A vertical street runs through the center, labeled with letters L, M, N, and P from top to bottom. To the left of this street are several lots. Lot 10 is at the top, followed by Lot 9, Lot 8, and Lot 7. Dimensions for these lots are given as follows:  
- Between Lot 10 and Lot 9: 15' x 60'  
- Between Lot 9 and Lot 8: 15' x 60'  
- Between Lot 8 and Lot 7: 15' x 60'  
At the bottom of the block, there is a larger area labeled "SUBJECT P" with dimensions 62' x 20'. The street width between the lettered sections is indicated as 60'.



IN RE: PETITION FOR SPECIAL HEARING  
S/S Church Lane, 1379' W of  
York Road  
(101 Church Lane)  
8th Election District  
3rd Councilmanic District  
Cardinal William H. Keeler  
Roman Catholic Archbishop of Baltimore - Petitioner

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Deputy Zoning Commissioner for consideration of a Petition for Special Hearing for that property known as 101 Church Lane, located in the vicinity of York Road in Cockeysville. The Petition was filed by the owner of the property, Cardinal William H. Keeler, Roman Catholic Archbishop of Baltimore, a Corporation Sole, through their attorney, Thomas M. Biddison, Jr., Esquire. The Petitioner seeks approval of a waiver of Section 26-278 of the Development Regulations to permit the demolition of a structure listed on the Maryland Historic Trust List as BA-1807. The subject property and relief sought are more particularly described on the site plan submitted which was accepted and marked into evidence as Petitioner's Exhibit 1.

Appearing at the hearing on behalf of the Petition were Thomas M. Biddison, Jr., Esquire, and several representatives of the St. Joseph Church and School which is located on the property. There were no Protestants or other interested persons present.

Testimony and evidence offered revealed that the subject property consists of 9.174 acres, more or less, zoned M.L.-I.M. and is improved with a church and several accessory buildings, including two school buildings, a combination leadership hall and rectory, a garage, and an old residential structure, which is the subject of this request. The Petitioner

is desirous of removing this structure, which at one time was used by the Church as a convent. The Church no longer uses the structure and wishes to remove same to make way for a new, 23,400 sq.ft. multi-purpose parish center. The proposed center will be attached to the existing church and school buildings via two breezeways. However, in order to proceed with the proposed improvements, the Petitioners seek the special hearing relief in order to remove the old structure which is on the Maryland Historic Trust inventory List.

It should be noted that the subject building is not on the Baltimore County Landmarks Preservation List. However, as a precaution, the Petitioners requested the special hearing relief to permit the demolition of this structure. No one appeared in opposition to the relief requested and the Landmarks Preservation Commission has, in fact, reviewed the matter with no comment.

After due consideration of the testimony and evidence presented, it is clear that practical difficulty or unreasonable hardship would result if the relief requested in the special hearing were not granted. A denial of the waiver and requiring preservation of this residential structure would cause unnecessary hardship to the Petitioner and prevent them from moving forward with their plans. It has been established that the requirements from which the Petitioner seeks relief would unduly restrict the use of the land due to the special conditions unique to this particular parcel. In addition, the relief requested will not be detrimental to the public health, safety, and general welfare.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the special hearing should be granted.

- 2 -

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 1st day of May, 1997 that the Petition for Special Hearing seeking approval of a waiver of Section 26-278 of the Development Regulations to permit the demolition of a structure listed on the Maryland Historic Trust List as BA-1807, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restriction:

- 1) The Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the relief granted herein shall be rescinded.

*Timothy M. Kotroco*  
TIMOTHY M. KOTROCO  
Deputy Zoning Commissioner  
for Baltimore County

TMK:bjs



Baltimore County  
Zoning Commissioner  
Office of Planning and Zoning

Suite 112, Courthouse  
400 Washington Avenue  
Towson, Maryland 21204  
(410) 887-4386

May 1, 1997

Thomas M. Biddison, Jr., Esquire  
Gallagher, Evellius & Jones  
400 Park Charles  
218 North Charles Street  
Baltimore, Maryland 21201

RE: PETITION FOR SPECIAL HEARING  
S/S Church Lane, 1379' W of York Road  
(101 Church Lane)  
8th Election District - 3rd Councilmanic District  
Cardinal William H. Keeler Roman Catholic Archbishop of Baltimore,  
A Corporation Sole - Petitioners  
Case No. 97-379-SPH

Dear Mr. Biddison:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Special Hearing has been granted in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Zoning Administration and Development Management office at 887-3391.

Very truly yours,

*Timothy M. Kotroco*

TIMOTHY M. KOTROCO  
Deputy Zoning Commissioner  
for Baltimore County

TMK:bjs

cc: Cardinal William H. Keeler, The Catholic Center  
320 Cathedral Street, Baltimore, Md. 21201-4413

Rev. Monsignor Paul G. Cook, Pastor, St. Joseph Church & School  
101 Church Lane, Cockeysville, Md. 21030

People's Counsel  
Case File

Printed with Soy-based Ink  
on Recycled Paper



## Petition for Special Hearing to the Zoning Commissioner of Baltimore County for the property located at 101 Church Lane, Cockeysville, MD 21030 which is presently zoned "ML-1M"

This Petition shall be filed with the Office of Zoning Administration & Development Management. The undersigned, legal owner(s) of the property situated in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

A waiver of Section 26-278 of the Development Regulations to permit the demolition of a structure listed on the Maryland Historic Trust List as BA-1807.

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Special Hearing advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

Contract Purchaser/Lessee: (Not Applicable)

(Type or Print Name)

Signature

Address

City

State

Zipcode

Attorney for Petitioner:

THOMAS M. BIDDISON, JR.

GALLAGHER, EVELLIOUS & JONES

400 Park Charles - 218 North Charles St.

Baltimore, Maryland 21201 727-7702

City

State

Zipcode

When no attorney is designated and affix, under the penalties of perjury, that I am the legal owner(s) of the property which is the subject of this Petition.

Legal Owner(s):

Cardinal William H. Keeler

Roman Catholic Archbishop of Baltimore,

A Corporation Sole

(Type or Print Name)

Signature

Address

City

State

Zipcode

Signature

The Catholic Center

320 Cathedral Street

Baltimore, Maryland 21201-4413

Phone No. 542-5586

Rev. Monsignor Paul G. Cook, Pastor

101 Church Lane

Cockeysville, Maryland 21030

Phone No. 666-1619

ESTIMATED LENGTH OF HEARING

minutes for Hearing

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED

DATE 1/19/97 BY [Signature]

### ZONING DESCRIPTION - ST. JOSEPH PARISH/COCKEYSVILLE

FROM THE POINT OF BEGINNING ON THE SOUTH SIDE OF CHURCH LANE A 30' PAVED RIGHT OF WAY A DISTANCE OF 1379 ± FROM THE CENTERLINE OF YORK ROAD WHICH IS A 80' RIGHT-OF-WAY.

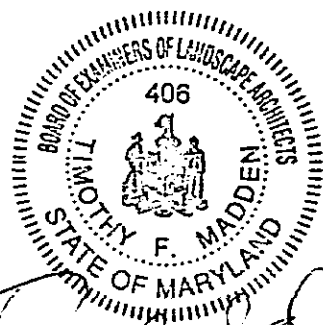
SOUTH 17 DEGREES 14 MIN WEST FOR A DISTANCE OF 614.47'

THENCE RUNNING SOUTH 70 DEG. 30 MIN 20 SECONDS EAST FOR A DISTANCE OF 445.38'

CONTINUING SOUTH 84 DEG. 47 MIN 40 SEC EAST FOR A DISTANCE OF 158.34'

THENCE RUNNING N 6 DEG. 39 MIN EAST FOR A DISTANCE OF 623.31' TO A POINT NEAR THE R/W OF CHURCH LANE

THENCE RUNNING AND BINDING WCHURCH LANE NORTH 75 DEG 45 MIN. WEST FOR A DISTANCE OF 629.20' TO THE PLACE OF BEGINNING. THIS PROPERTY LOCATED IN THE EIGHTH DISTRICT AND THE THIRD COUNCILMANIC DISTRICT OF BALTIMORE COUNTY, MD. THE SUBJECT PROPERTY CONTAINING 9.174 ACRES MORE OR LESS.



*Timothy M. Kotroco*  
2/20/97

### CERTIFICATE OF PUBLICATION

TOWSON, MD., March 27, 1997

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of successive weeks, the first publication appearing on March 27, 1997.

THE JEFFERSONIAN,

*A. Henrichsen*  
LEGAL AD. - TOWSON

#### NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Board of Zoning Appeals, has ordered a public hearing to be held on the following matter:

Case #97-379-SPH

101 Church Lane

Cockeysville, Maryland 21030

Legal Owner(s):

Cardinal William H. Keeler

Roman Catholic Archbishop of Baltimore,

A Corporation Sole

Special Hearing to approve a waiver of the development regulations to permit the demolition of a structure listed on the Maryland Historic Trust

Legal Owner(s):

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A Corporation Sole

Special Hearing to approve a waiver of the development regulations to permit the demolition of a structure listed on the Maryland Historic Trust

Legal Owner(s):

Cardinal William H. Keeler



Baltimore County  
Department of Permits and  
Development Management

Development Processing  
County Office Building  
111 West Chesapeake Ave.  
Towson, Maryland 21204

97-379 SPH

#### ZONING HEARING ADVERTISING AND POSTING REQUIREMENTS & PROCEDURES

Baltimore County zoning regulations require that notice be given to the general public/neighbors property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property (responsibility of which, lies with the petitioner/applicant) and placement of a notice in at least one newspaper of general circulation in the County.

This office will ensure that the legal requirements for advertising are satisfied. However, the petitioner is responsible for the costs associated with this requirement.

Billing for legal advertising, due upon receipt, will come from and should be remitted directly to the newspaper.

NON-PAYMENT OF ADVERTISING FEES WILL STAY ISSUANCE OF ZONING ORDER.

ARNOLD JABLON, DIRECTOR

For newspaper advertising:

Item No.: 379

Petitioner: William H. Keeler

Location: St. Joseph Parish / Cockeysville, Md.

PLEASE FORWARD ADVERTISING BILL TO:

NAME: Mr. Thomas H. Biddison, Jr., Gallagher, Evellius & Jones

ADDRESS: 400 Park Charles 218 North Charles Street

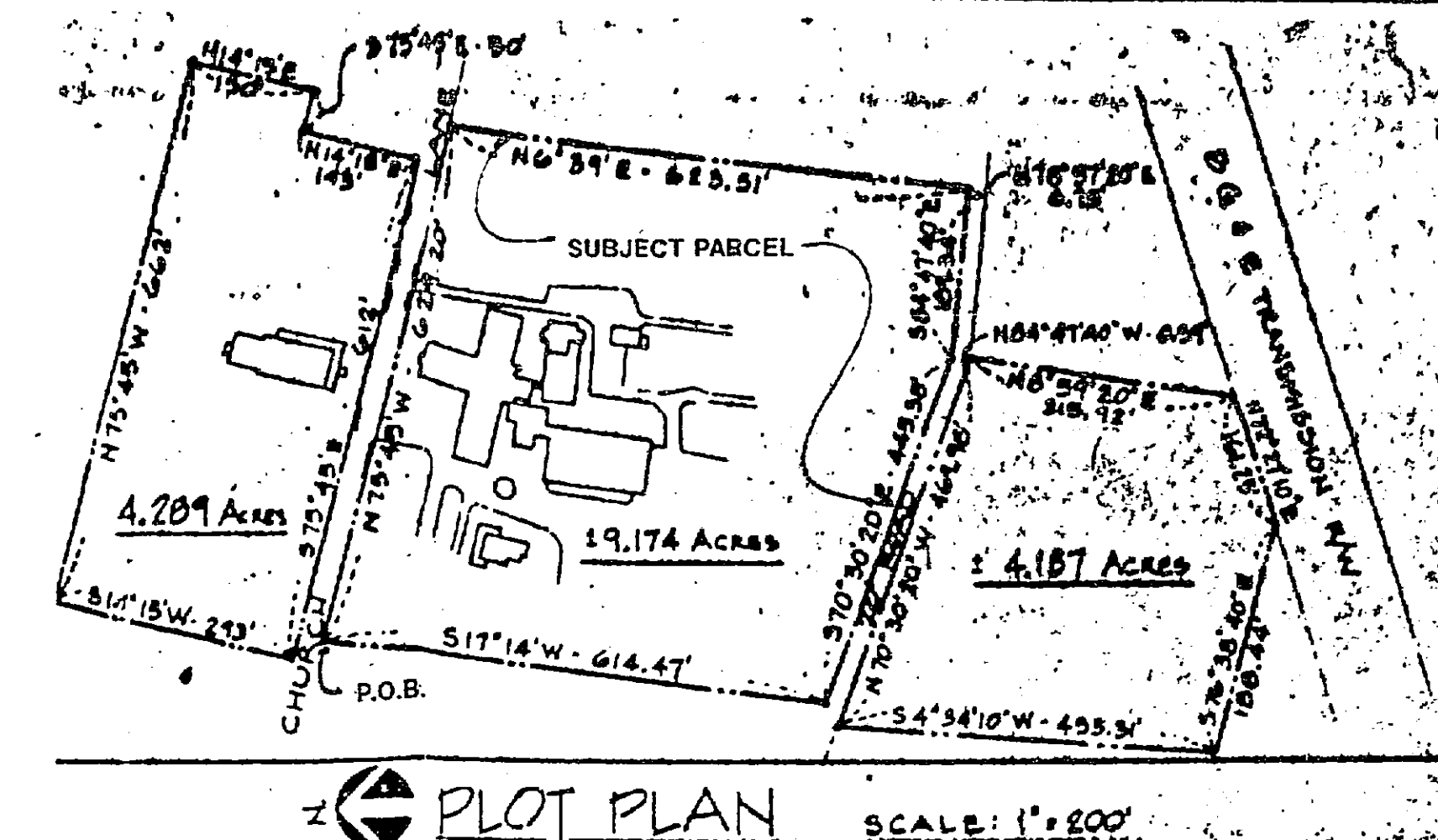
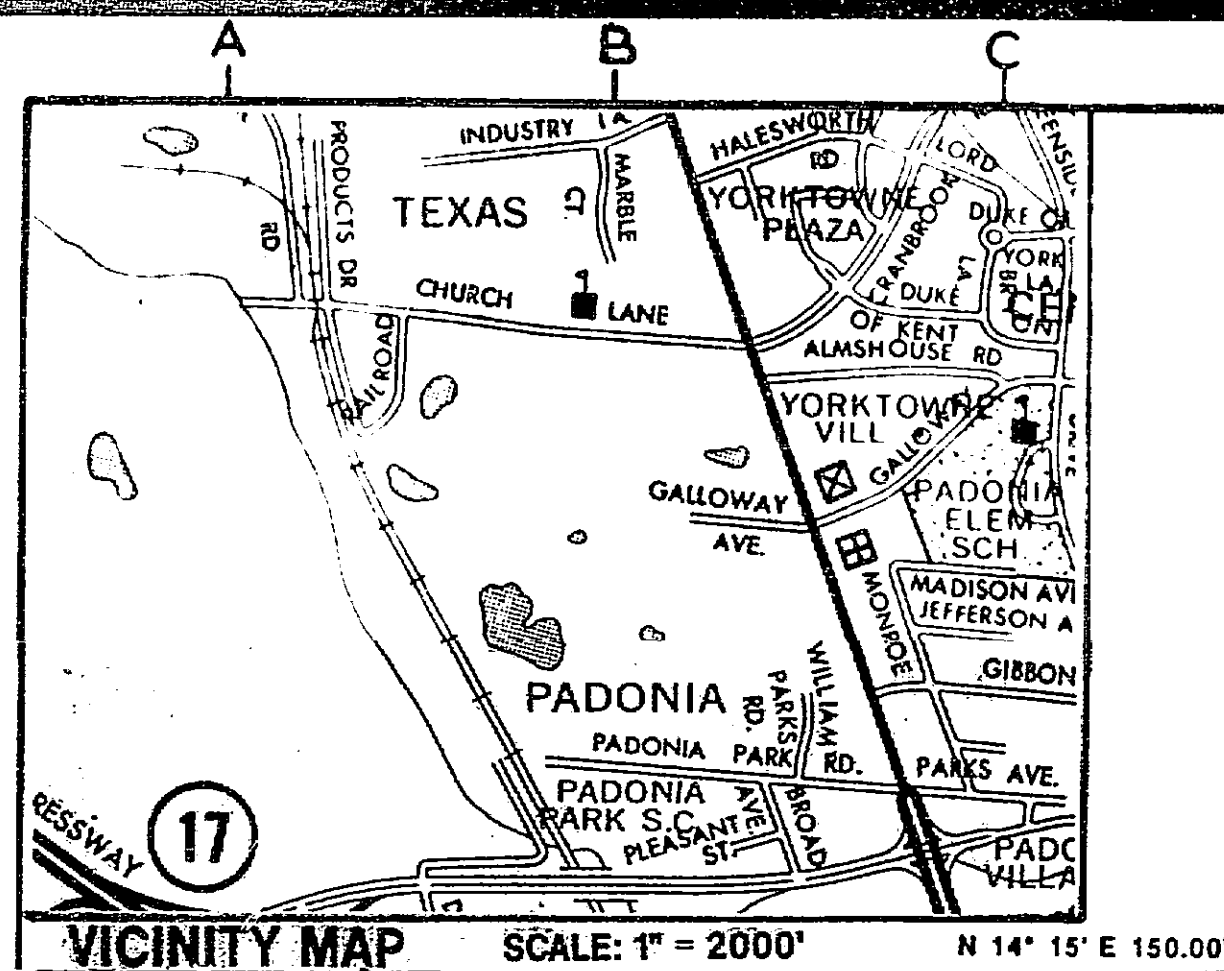
Baltimore, Md. 21201

PHONE NUMBER: 727-7702

AD:ggg

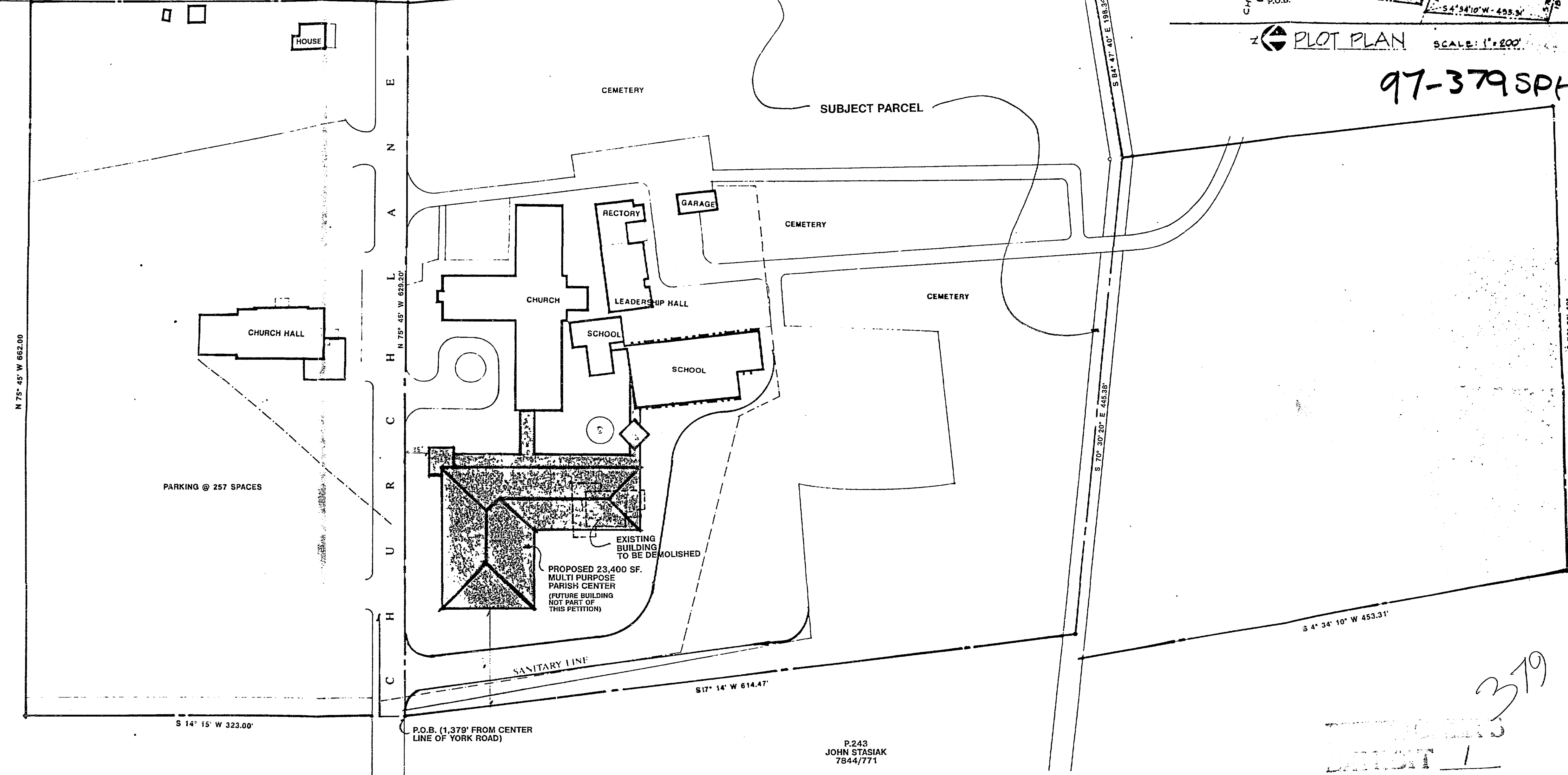
(Revised 09/24/96)





**RUBELING & ASSOCIATES, INC.**  
ARCHITECTURE  
INTERIOR DESIGN  
401 JEFFERSON AVENUE  
TOWSON, MARYLAND 21204-3808  
410-337-8888  
FAX: 410-337-8974

97-379SPH



**SITE DATA**

1. OWNER: ST. JOSEPH PARISH, COCKEYSVILLE, ATTN: MRS. ROSEMARY F. & COOK, PASTOR

2. PROPERTY ADDRESS: 101 CHURCH LANE, COCKEYSVILLE, MD 21030

3. PLAN PREPARED BY: MORRIS & RUBELING ASSOCIATES, INC., 110 WEST ROAD, SUITE 100, TOWSON, MARYLAND 21204

4. ZONING HISTORY: THERE ARE NO PREVIOUS ZONING CASES ON THE SUBJECT PROPERTY

5. REQUIRED SETBACKS:

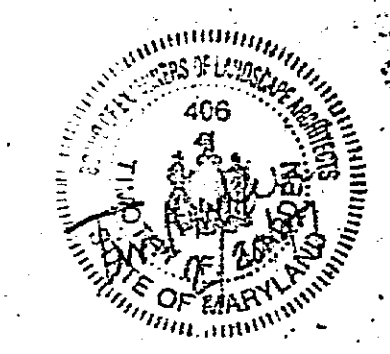
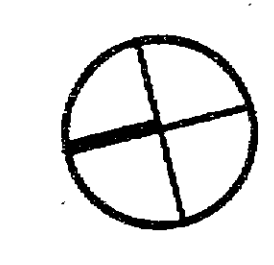
	REQ.	PROJ.
FRONT	25'	25'
SIDE	30'	30'
REAR	30'	405'

6. THE PURPOSE OF THE SPECIAL HEARING IS TO REQUEST A WAIVER OF THE DEVELOPMENT REGULATIONS, SECTION 26-27B TO PERMIT THE DEMOLITION OF A STRUCTURE WHICH IS ON THE MARYLAND HISTORIC TRUST LIST. (DA 1897)

7. THE SUBJECT STRUCTURE IS NOT ON THE BALTIMORE COUNTY AT-RISK REGISTER.

P.243  
JOHN STASIAK  
7844/771

PLAN TO ACCOMPANY PETITION  
FOR SPECIAL HEARING



ST. JOSEPH CHURCH AND  
SCHOOL GROUNDS  
TEXAS, MARYLAND

REVISIONS:

NO.	DESCRIPTION	DATE

LAST REV.:  
PROJECT NO. 95-055  
DATE: 1-28-97  
SCALE: 1" = 50'  
TITLE: SITE PLAN



Request for Zoning Variance, Special Exception, or Special Hearing

Date to be Posted: Anytime before but no later than 3/24/97

Format for Sign Printing: Black Letters on White Background:

## ZONING NOTICE

Case No. 97-379-SPH

A PUBLIC HEARING WILL BE HELD BY  
THE ZONING COMMISSIONER  
IN TOWSON, MD

PLACE:

DATE AND TIME:

REQUEST: A WAIVER OF THE DEVELOPMENT REGULATIONS

TO PERMIT THE DEMOLITION OF A STRUCTURE LISTED ON THE  
MARYLAND HISTORIC TRUST LIST

POSTPONEMENTS DUE TO WEATHER OR OTHER CONDITIONS ARE SOMETIMES NECESSARY.  
TO CONFIRM HEARING CALL 887-3391.

DO NOT REMOVE THIS SIGN AND POST UNTIL DAY OF HEARING UNDER PENALTY OF LAW  
HANDICAPPED ACCESSIBLE

996  
post-4.doc

TO: PUTNEY PUBLISHING COMPANY  
March 27, 1997 Issue - Jeffersonian

Please forward billing to:

Thomas H. Biddison, Jr., Esq.  
Gallagher, Ebelius & Jones  
400 Park Charles  
218 N. Charles Street  
Baltimore, MD 21201  
727-7702

### NOTICE OF HEARING

The Zoning Commission of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 97-379-SPH

101 Church Lane  
S/S Church Lane, 1379 1/2 W of York Road  
St. Joseph Church & School

Legal Owner(s): Cardinal William H. Keeler, Roman Catholic Archbishop, a Corporation Sole

Special Hearing to approve a waiver of the development regulations to permit the demolition of a structure listed on the Maryland Historic Trust List as BA-1807.

HEARING: THURSDAY, APRIL 15, 1997 at 2:00 p.m., 4th floor hearing room, County Courts Bldg., 401  
Roxley Avenue

LAURENCE E. SCHMIDT

ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.  
(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, PLEASE CALL 887-3391.



Baltimore County  
Department of Permits and  
Development Management

Development Processing  
County Office Building  
111 West Chesapeake Avenue  
Towson, Maryland 21204

March 21, 1997

### NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 97-379-SPH

101 Church Lane  
S/S Church Lane, 1379 1/2 W of York Road  
St. Joseph Church & School

Legal Owner(s): Cardinal William H. Keeler, Roman Catholic Archbishop, a Corporation Sole

Special Hearing to approve a waiver of the development regulations to permit the demolition of a structure listed on the Maryland Historic Trust List as BA-1807.

HEARING: TUESDAY, APRIL 15, 1997 at 2:00 p.m., 4th floor hearing room, County Courts Bldg., 401  
Roxley Avenue

Arnold Jablon  
Director

cc: The Catholic Center  
Rev. Monsignor Paul G. Cook  
Thomas Biddison, Jr., Esq.

NOTES: (1) YOU MUST HAVE THE ZONING NOTICE SIGN POSTED ON THE PROPERTY BY MARCH 31, 1997.  
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.  
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 887-3391.

Printed with Soybean Ink  
on Recycled Paper



Baltimore County  
Department of Permits and  
Development Management

Development Processing  
County Office Building  
111 West Chesapeake Avenue  
Towson, Maryland 21204

April 10, 1997

Thomas N. Biddison, Jr., Esquire  
Gallagher, Ebelius and Jones  
400 Park Charles  
218 North Charles Street  
Baltimore, MD 21201

RE: Item No.: 379  
Case No.: 97-379-SPH  
Petitioner: Cardinal W. H. Keeler

Dear Mr. Biddison:

The Zoning Advisory Committee (ZAC), which consists of representatives from Baltimore County approval agencies, has reviewed the plans submitted with the above referenced petition, which was accepted for processing by Permits and Development Management (PDM), Zoning Review, on March 10, 1997.

Any comments submitted thus far from the members of ZAC that offer or request information on your petition are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. Only those comments that are informative will be forwarded to you; those that are not informative will be placed in the permanent case file.

If you need further information or have any questions regarding these comments, please do not hesitate to contact the commenting agency or Roslyn Eubanks in the zoning office (887-3391).

Sincerely,

*W. Carl Richards, Jr.*  
W. Carl Richards, Jr.  
Zoning Supervisor

WCR/re  
Attachment(s)

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on Recycled Paper

## BALTIMORE COUNTY, MARYLAND

### INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director  
Department of Permits and Development Management

DATE: April 4, 1997

FROM: Arnold F. 'Pat' Keller, III, Director  
Office of Planning

SUBJECT: 101 Church Lane

#### INFORMATION:

Item Number: 379

Petitioner: Cardinal William H. Keeler

Property Size: \_\_\_\_\_

Zoning: ML-1M

Requested Action: Special Hearing

Hearing Date: 4/1

#### SUMMARY OF RECOMMENDATIONS:

The next meeting of the Landmarks Preservation Commission will be held on April 10, 1997. If necessary, comments will be provided to the Zoning Commissioner after the meeting has been held.

Prepared by: *Jeffrey M. L...*

Division Chief: *Carol L. K...*

APK/JL:rdn

ITEM379/PZONE/ZAC1



Maryland Department of Transportation  
State Highway Administration

David L. Winstead  
Secretary  
Parker F. Williams  
Administrator

Ms. Roslyn Eubanks  
Baltimore County Office of  
Permits and Development Management  
County Office Building, Room 109  
Towson, Maryland 21204

RE: Baltimore County 3-21-97  
Item No. 379 JLL

Dear Ms. Eubanks:

This office has reviewed the referenced item and we have no objection to approval as it does not access a State roadway and is not affected by any State Highway Administration projects.

Please contact Larry Gredlein at 410-545-5806 if you have any questions.

Thank you for the opportunity to review this item.

Very truly yours,

*P. J. Smith*  
for Ronald Burns, Chief  
Engineering Access Permits  
Division

LG

My telephone number is \_\_\_\_\_

Maryland Relay Service  
1-800-668-7233  
Mailing Address: P.O. Box 37071, Baltimore, MD 21237-0707  
Street Address: 707 North Calvert Street, Baltimore, MD 21202

## BALTIMORE COUNTY, MARYLAND

### DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT

#### INTER-OFFICE CORRESPONDENCE

TO: PDM

DATE: 3/25/97

FROM: R. Bruce Seeley  
Permits and Development Review  
DEPRM

SUBJECT: Zoning Advisory Committee Meeting  
Meeting Date: March 24, 97

The Department of Environmental Protection & Resource Management has no comments for the following Zoning Advisory Committee items:

Item #'s:	<u>379</u>	388
	381	389
	382	390
	383	393
	385	394
	387	

RBS:sp

BRUCEZ/DEPRM/TXTSBP

## BALTIMORE COUNTY, MARYLAND

### INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director  
Department of Permits & Development  
Management

Date: March 31, 1997

FROM: Robert W. Bowling, Chief  
Development Plans Review Division

SUBJECT: Zoning Advisory Committee Meeting  
for March 31, 1997  
Item Nos. 378, 379, 380, 381, 382, 383, 384, 385, 386, 387 & 391

The Development Plans Review Division has reviewed the subject zoning item, and we have no comments.

RWB:HJO:cab

cc: File

ZONE331.NCC





700 East Joppa Road, Suite 901  
Towson, MD 21286-5500

(410) 887-4500

March 31, 1997

Arnold Jablon, Director  
Zoning Administration and Development Management  
Baltimore County Office Building  
Towson, MD 21204  
MAIL STOP-1105

RE: Property Owner: Cardinal William H. Keeler, Roman Catholic  
Archbishop of Baltimore, a Corporation Sole

Location: DISTRIBUTION MEETING OF March 24, 1997

Item No.: 379 Zoning Agenda:

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

1. Fire hydrants for the referenced property are required and shall be located at proper intervals, along an approved road in accordance with Baltimore County Standard Design Manual Sec. 2.4.4 Fire Hydrants, as published by the Department of Public Works.
4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.
5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1991 edition prior to occupancy.

REVIEWER: LT. ROBERT P. SAUERWALD  
Fire Marshal Office, PHONE 887-4881, MS-1102F  
cc: File

## PETITION PROBLEMS

47-379 SPH

### #378 --- MJK

1. Sign form is incomplete/incorrect.

### #379 --- JLL

1. Sign form is incomplete/incorrect.

### #380 --- RT

1. Folder says zoning is D.R.-3.5; petition says zoning is D.R.-5.5 - Which is correct?

### #382 --- CAM

1. Need printed or typed title and authorization of person signing for legal owner.
2. Need printed name and title and authorization of person signing for contract purchaser.
3. No review information on bottom of petition form.

### #385 --- MJK

1. Sign form is incomplete/incorrect.
2. No description on folder.
3. No zoning on folder.
4. No acreage on folder.
5. No election district on folder.
6. No councilmanic district on folder.
7. Plan is illegible.

RE: PETITION FOR SPECIAL HEARING \* BEFORE THE  
101 Church Lane, S/S Church Lane, 1379+/- \* ZONING COMMISSIONER  
W of York Rd (St. Joseph Church & School) \*  
Cardinal William H. Keeler, Roman \* OF BALTIMORE COUNTY  
Catholic Archbishop, a Corporation Sole \*  
Petitioner \* CASE NO. 97-379-SPH  
\* \* \* \* \*

#### ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final order.

*Peter Max Zimmerman*  
PETER MAX ZIMMERMAN  
People's Counsel for Baltimore County

*Carole S. Demilio*  
CAROLE S. DEMILIO  
Deputy People's Counsel  
Room 47, Courthouse  
400 Washington Avenue  
Towson, MD 21204  
(410) 887-2186

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of April, 1997, a copy of the foregoing Entry of Appearance was mailed to Thomas N. Biddison, Jr., Esq., Gallagher, Evelius & Jones, 218 N. Charles Street, Suite 400, Baltimore, MD 21201, attorney for Petitioners.

*Peter Max Zimmerman*  
PETER MAX ZIMMERMAN

The proposed 200 square foot Parish multipurpose center will greatly enhance the ability of the parish to provide additional public benefits to the county.

Mr. Arnold Jablon  
June 18, 1997  
Page 2

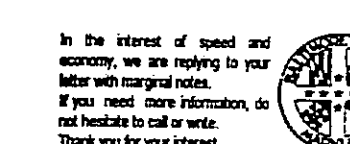
We find that Section 407 does apply to this project and that a waiver should be granted by the county. We hereby request your review of this issue.  
We await your response.

Very Truly Yours,  
TIMOTHY F. MADDEN, ASLA, AICP  
Principal

enclosures

cc: Msgr. Paul Cook

Speed  
Letter



June 30, 1997

8th Election District

Dear Mr. Madden:

Please be advised that the Department of Permits and Development Management, Bureau of Zoning Review, acknowledges that the subject use is permitted within the M.L. zone pursuant to Section 407 of the Baltimore County Zoning Regulations.

This office cannot grant a waiver from the development regulations as this must be accomplished by the Development Review Committee (DRC).

On February 10, 1997 the possible exemption was tabled at the applicant's request. You must contact Mr. Don Rascove, Development Manager at 410-887-3353 and request that this item be placed on the next possible agenda.

Very truly yours,

*Mitchell J. Kellman*  
Mitchell J. Kellman  
Planner II  
Zoning Review

MJK:rye

c: zoning case 97-379-SPH

### GALLAGHER, EVELIUS & JONES

PARK CHARLES  
SUITE 400  
218 NORTH CHARLES STREET  
BALTIMORE, MD 21201  
TELEPHONE (410) 727-7702  
TELECOPIER (410) 887-3079  
TELECOPIER (410) 887-3085

WRITER'S DIRECT DIAL: (410) 347-1244

April 7, 1997

Office of Zoning Administration &  
Development Management  
401 Bosley Avenue  
Second Floor  
Court House  
Towson, Maryland 21204

Re: St. Joseph, Texas Parish  
101 Church Lane  
Cockeysville, MD 21030

Dear Sir/Madam:

Enclosed please find for filing Petitioner's Memorandum of Law in connection with the above matter.

If you have any questions, please contact me. Thank you for your assistance.

Very truly yours,

*Thomas N. Biddison, Jr.*  
Thomas N. Biddison, Jr.

TNBTR/jeg

Encl.  
cc: Rev. Msgr. Paul G. Cook (w/encl.)

5/15/97-jeg

#100-55

IN THE MATTER OF THE  
PETITION FOR SPECIAL HEARING  
TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY  
FOR THE PROPERTY LOCATED AT  
101 CHURCH LANE, COCKEYSVILLE, MD 21030

#### MEMORANDUM OF LAW

This matter comes before the Zoning Hearing Office as part of the development review process because the plans for the new construction of the St. Joseph's Texas Church complex envision demolishing an unused building, previously used as a residence, which is located exactly at the planned location of the multi-purpose building which will service both the Church and the School, and which must be located so that it is directly accessible to both to optimize the effectiveness of its use.

Section 26-278 provides that in a development plan, historic structures identified on the Maryland Historical Trust Inventory of Historic Properties must be preserved. This is so, even though the State law allowing for the designation of historic properties provides no protection for those properties.

The stringent provisions of Section 26-278 are greatly ameliorated by waiver provisions in the law allowing for such a requirement, as imposed by Section 26-278, to be waived if, among other reasons, compliance "would cause unnecessary hardship." Section 26-172(a)(2).

The facts are that the residence is of no further use to the Church, is deteriorating, and is located in the exact place which has been identified as the optimum location for a multi-purpose center, directly accessible through internal connections with both

IN THE MATTER OF THE  
PETITION FOR SPECIAL HEARING  
TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY  
FOR THE PROPERTY LOCATED AT  
101 CHURCH LANE, COCKEYSVILLE, MD 21030

#### AFFIDAVIT OF MSGR. PAUL G. COOK

I, Msgr. Paul G. Cook, solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of the following paper are true:

1. I am at least 21 years of age and I am competent to testify to the matters stated herein.
2. I have been a priest in the Archdiocese of Baltimore since my ordination in 1959. I have been the pastor of St. Joseph's, Texas since 1977.
3. The legal owner of the land and building of St. Joseph's is Cardinal William H. Keeler, Roman Catholic Archbishop of Baltimore, and his successors, a corporation sole.
4. The corporation sole holds the property for the benefit of the separately incorporated St. Joseph's Parish. Under the canon law of the Catholic Church, the Parish is responsible for its own operations under the oversight of the Archdiocese.
5. Our Parish entered into a long-term plan three years ago for capital improvements to the Church and school. The Parish was faced with physical plant demands, and that required attention in order to meet the religious and liturgical needs of the Parish. These needs include a multi-purpose center to meet the needs of the Church and its Parish school. The education provided by the Parish school is a critical component of the religious mission of the

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
(Northern Division)

Case No.: S-96-167

CARDINAL WILLIAM H. KEELER,  
ROMAN CATHOLIC ARCHBISHOP OF BALTIMORE,  
AND HIS SUCCESSORS, A CORPORATION SOLE, et al.

Plaintiffs

v.

MAYOR AND CITY COUNCIL OF CUMBERLAND, et al.

Defendants

MEMORANDUM IN SUPPORT OF PLAINTIFFS'  
MOTION FOR PARTIAL SUMMARY JUDGMENT

Thomas N. Biddison, Jr.  
Federal Bar No. 09847  
Peter E. Keith  
Federal Bar No. 01483  
David W. Kinkopf  
Federal Bar No. 23366  
GALLAGHER, EVELIUS & JONES  
218 North Charles Street  
Suite 400  
Baltimore, MD 21201-4033  
(410) 727-7702

Attorneys for Plaintiffs



Cardinal William H. KEELER,  
et al., Plaintiffs,  
v.  
MAYOR & CITY COUNCIL  
OF CUMBERLAND, et  
al., Defendants.

Civil Action No. S-96-167.

United States District Court,  
D. Maryland.

Oct. 15, 1996.

Church brought action challenging city's refusal to grant permission to demolish monastery and chapel in historic district. After finding Religious Freedom Restoration Act unconstitutional, 928 F.Supp. 581, the District Court, Shalton, J., held that (1) refusal to allow demolition of monastery and its replacement with buildings which would better serve needs of church violated church's freedom of religion under Federal and State Constitutions; (2) refusal to allow demolition of building which was financial drain on church and which church was required to maintain in safe repair was an unconstitutional taking under Federal and State Constitutions; but (3) proper remedy for unconstitutional taking is damages not order enjoining the government regulation.

Ordered accordingly.

#### 1. Health and Environment §25.5(3)

Statute providing that if application for alteration of structure applies to a structure which is deemed to be of unusual importance but no economically feasible plan can be formulated, the historic commission will have 90 days to negotiate with the owners and other parties in an effort to find means of preserving the building does not require that application for alteration or demolition be granted at the end of the 90-day period if no plan is formulated, and city ordinance requiring rejection of the application in such circumstances was not contrary to the statute. Md. Code 18-7, Art. 66B, § 8.02; Cumberland, Md., Ordinance No. 2870, § 7.c.

#### 2. Constitutional Law §84.5(18)

##### Health and Environment §25.5(6)

City's denial of certificate of appropriateness for demolition of monastery and chapel infringed church's free exercise rights if affidavits of church officials, taken as true, revealed that demolition implicated elements of the Roman Catholic religion, despite claim that affidavits were self-serving and should be viewed with suspicion because they represented subjective belief that there was a religious aspect to the determination to demolish the buildings. U.S.C.A. Const. Amend. 1.

#### 3. Constitutional Law §84.5(18)

Affidavits which stated that it was the obligation of church officials to hold property for proper ends of the church, including worship, doctrine, and governance, and not for secular goals, and that existing monastery and chapel in historic district interfered with church's goals and required replacement by more suitable buildings established that church's decision to demolish monastery and chapel involved exercise of faith, thus implicating First Amendment free exercise principles. U.S.C.A. Const. Amend. 1.

#### 4. Constitutional Law §84.1

Constitutionality of government regulation that burdens religious practice depends to large extent upon neutrality of regulation with respect to religion and upon state's commitment to uniform enforcement of its law. U.S.C.A. Const. Amend. 1.

#### 5. Constitutional Law §84.5(18)

##### Health and Environment §25.5(6)

City did not assert compelling state interest in support of historic preservation ordinance which would allow it to be enforced even when it had effect of burdening a particular religious practice. U.S.C.A. Const. Amend. 1; Cumberland, Md., Ordinance No. 2870, § 1.a.

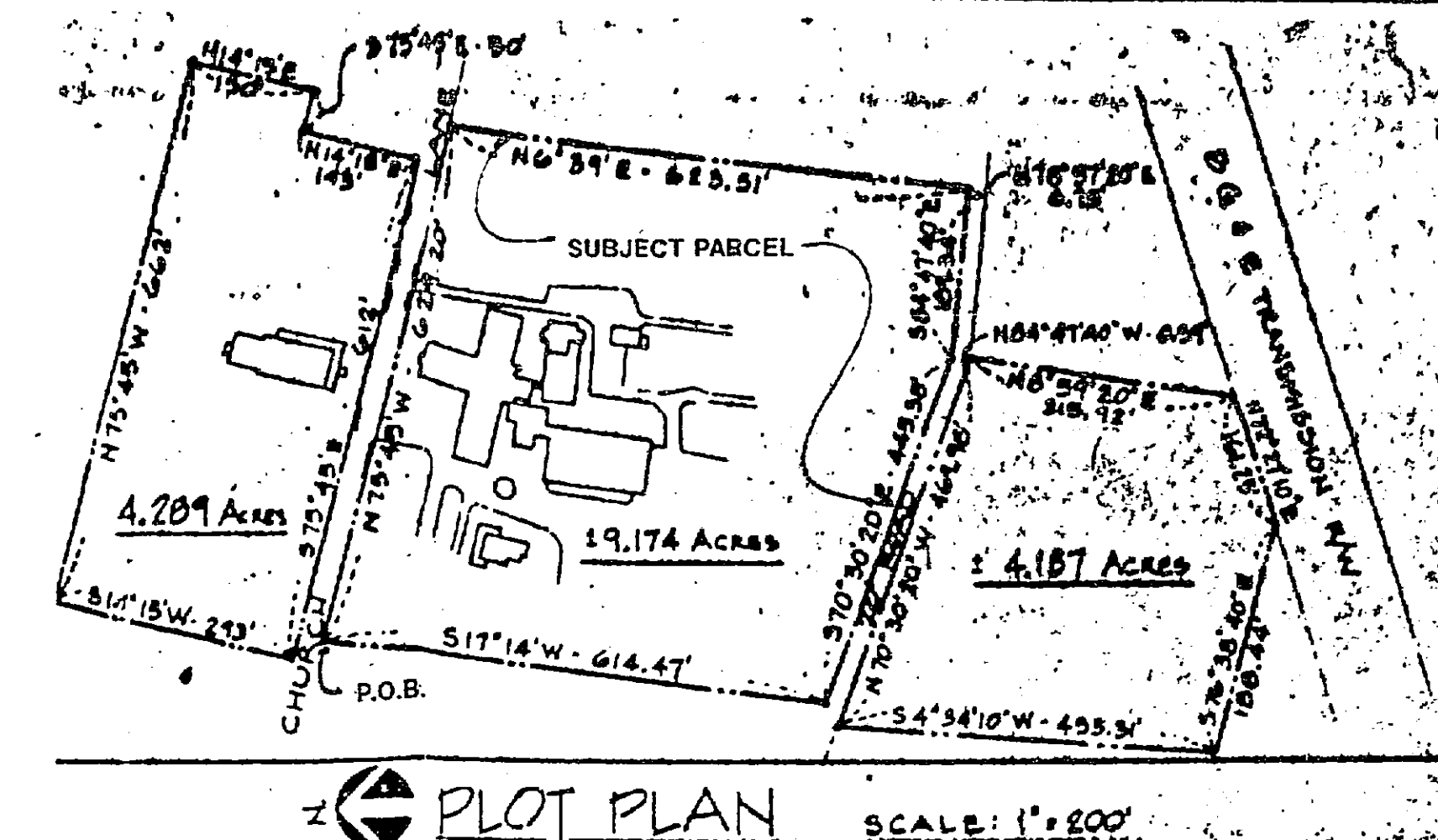
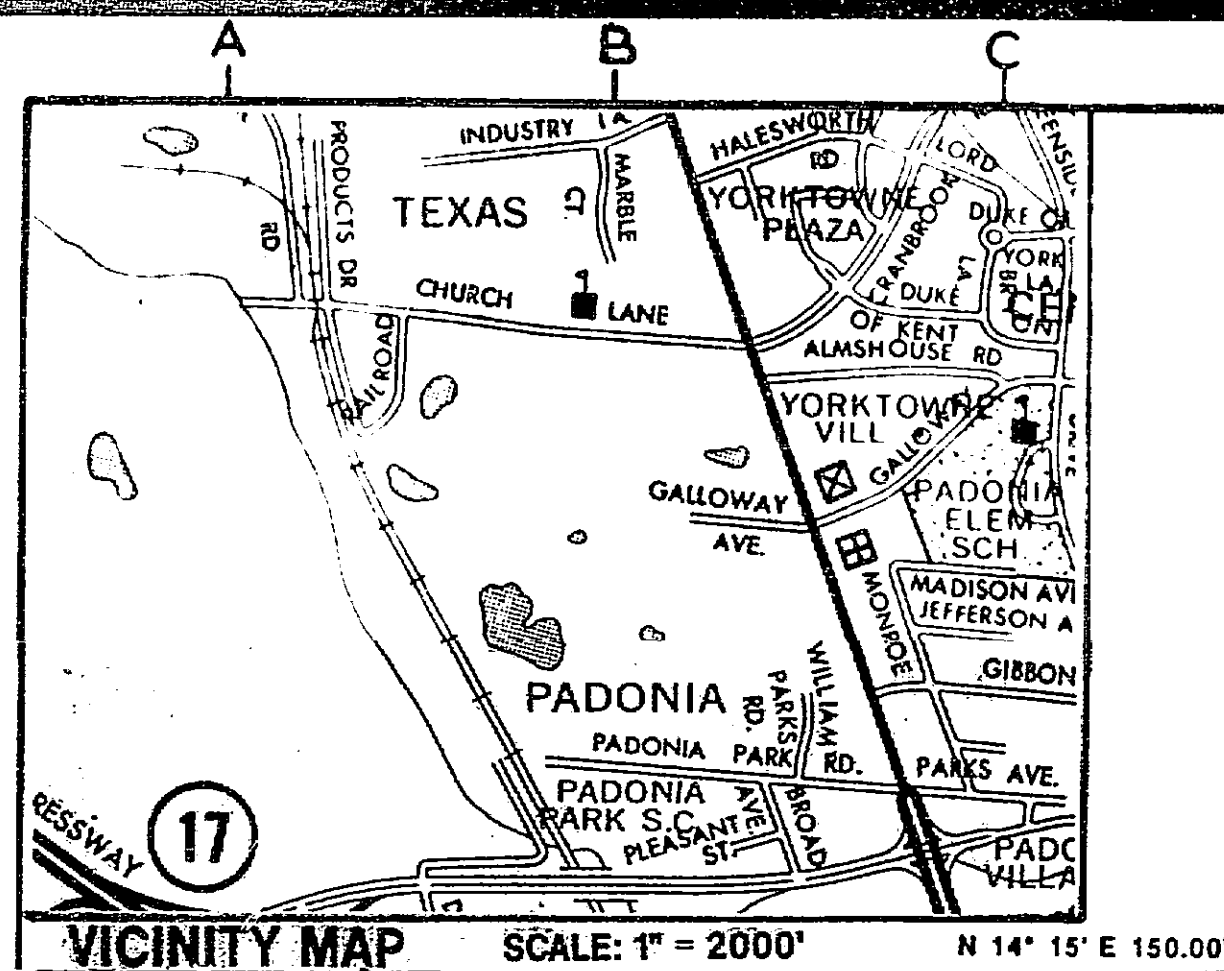
#### 6. Constitutional Law §84.5(18)

##### Health and Environment §25.5(6)

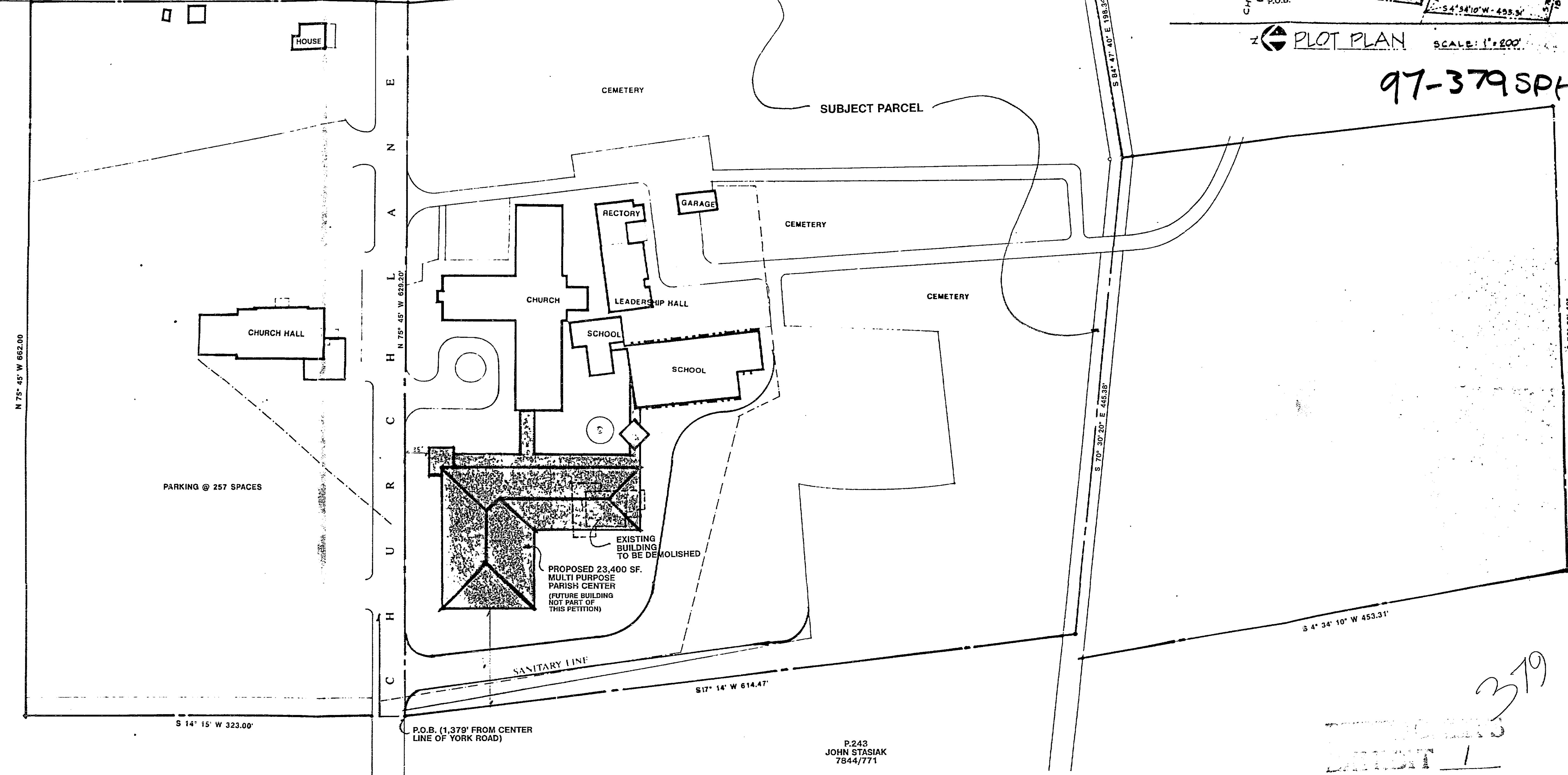
City's refusal to grant church certificate of appropriateness for demolition of monastery and chapel impermissibly violated church's right to free exercise of religion.







97-379SPH



**SITE DATA**

1. OWNER: ST. JOSEPH PARISH COCKEYSVILLE  
ATTN: MRS. ROSEMARY F. & COOK, PASTOR

2. PROPERTY ADDRESS: 101 CHURCH LANE  
COCKEYSVILLE, MD 21030  
000307100

TAX ACCT. #: 8  
ELECTION DIST.: MAP 51 PARCEL 255  
TAX MAP PARCEL: 310 CHURCH LANE  
WATERSEED # 3-12  
SUBSECTORS 3-12  
CENSUS TRACT # COCKEYSVILLE DISTRICT

3. PLAN PREPARED BY: MORRIS & RUTLAND ASSOCIATES, INC.  
110 WEST ROAD, SUITE 100  
TOWSON, MARYLAND 21204  
ATTN: THE ARCHITECT

4. ZONING HISTORY: THERE ARE NO PREVIOUS ZONING CASES ON THE SUBJECT PROPERTY

5. REQUIRED SETBACKS:

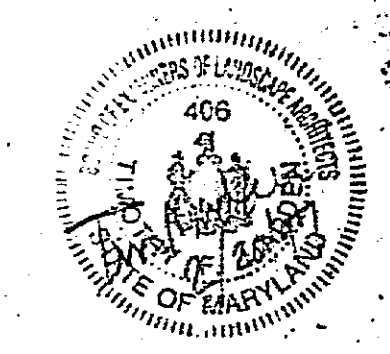
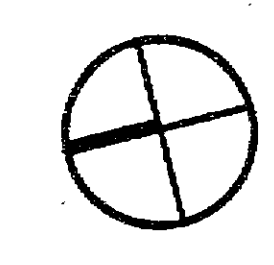
	REQ.	PROJ.
FRONT	25'	25'
SIDE	30'	30'
REAR	30'	405'

6. THE PURPOSE OF THE SPECIAL HEARING IS TO REQUEST A WAIVER OF THE DEVELOPMENT REGULATIONS, SECTION 26-27B TO PERMIT THE DEMOLITION OF A STRUCTURE WHICH IS ON THE MARYLAND HISTORIC TRUST LIST. (DA 1897)

7. THE SUBJECT STRUCTURE IS NOT ON THE BALTIMORE COUNTY HISTORIC TRUST LIST.

P.243  
JOHN STASIAK  
7844/771

PLAN TO ACCOMPANY PETITION  
FOR SPECIAL HEARING



**RUBELING & ASSOCIATES, INC.**  
ARCHITECTURE  
INTERIOR DESIGN  
401 JEFFERSON AVENUE  
TOWSON, MARYLAND 21204-3808  
410-337-8888  
FAX: 410-337-8974

ST. JOSEPH CHURCH AND  
SCHOOL GROUNDS  
TEXAS, MARYLAND

REVISIONS:

NO.	DESCRIPTION	DATE

LAST REV.:  
PROJECT NO. 95-055  
DATE: 1-28-97  
SCALE: 1"=50'  
TITLE: SITE PLAN

SHEET:  
1 OF 1

MORRIS & RUTLAND ASSOCIATES, INC.  
ARCHITECTS AND INTERIORS



IN RE: PETITION FOR SPECIAL HEARING  
S/S Church Lane, 1379' W of  
York Road  
(101 Church Lane)  
8th Election District  
3rd Councilmanic District  
Cardinal William H. Keeler  
Roman Catholic Archbishop of Baltimore - Petitioner

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Deputy Zoning Commissioner for consideration of a Petition for Special Hearing for that property known as 101 Church Lane, located in the vicinity of York Road in Cockeysville. The Petition was filed by the owner of the property, Cardinal William H. Keeler, Roman Catholic Archbishop of Baltimore, a Corporation Sole, through their attorney, Thomas M. Biddison, Jr., Esquire. The Petitioner seeks approval of a waiver of Section 26-278 of the Development Regulations to permit the demolition of a structure listed on the Maryland Historic Trust List as BA-1807. The subject property and relief sought are more particularly described on the site plan submitted which was accepted and marked into evidence as Petitioner's Exhibit 1.

Appearing at the hearing on behalf of the Petition were Thomas M. Biddison, Jr., Esquire, and several representatives of the St. Joseph Church and School which is located on the property. There were no Protestants or other interested persons present.

Testimony and evidence offered revealed that the subject property consists of 9.174 acres, more or less, zoned M.L.-I.M. and is improved with a church and several accessory buildings, including two school buildings, a combination leadership hall and rectory, a garage, and an old residential structure, which is the subject of this request. The Petitioner

is desirous of removing this structure, which at one time was used by the Church as a convent. The Church no longer uses the structure and wishes to remove same to make way for a new, 23,400 sq.ft. multi-purpose parish center. The proposed center will be attached to the existing church and school buildings via two breezeways. However, in order to proceed with the proposed improvements, the Petitioners seek the special hearing relief in order to remove the old structure which is on the Maryland Historic Trust inventory List.

It should be noted that the subject building is not on the Baltimore County Landmarks Preservation List. However, as a precaution, the Petitioners requested the special hearing relief to permit the demolition of this structure. No one appeared in opposition to the relief requested and the Landmarks Preservation Commission has, in fact, reviewed the matter with no comment.

After due consideration of the testimony and evidence presented, it is clear that practical difficulty or unreasonable hardship would result if the relief requested in the special hearing were not granted. A denial of the waiver and requiring preservation of this residential structure would cause unnecessary hardship to the Petitioner and prevent them from moving forward with their plans. It has been established that the requirements from which the Petitioner seeks relief would unduly restrict the use of the land due to the special conditions unique to this particular parcel. In addition, the relief requested will not be detrimental to the public health, safety, and general welfare.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the special hearing should be granted.

- 2 -

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 1st day of May, 1997 that the Petition for Special Hearing seeking approval of a waiver of Section 26-278 of the Development Regulations to permit the demolition of a structure listed on the Maryland Historic Trust List as BA-1807, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restriction:

1) The Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the relief granted herein shall be rescinded.

Timothy M. Kotroco  
Deputy Zoning Commissioner  
for Baltimore County

TMK:bjs



Baltimore County  
Zoning Commissioner  
Office of Planning and Zoning

Suite 112, Courthouse  
400 Washington Avenue  
Towson, Maryland 21204  
(410) 887-4386

May 1, 1997

Thomas M. Biddison, Jr., Esquire  
Gallagher, Evellius & Jones  
400 Park Charles  
218 North Charles Street  
Baltimore, Maryland 21201

RE: PETITION FOR SPECIAL HEARING  
S/S Church Lane, 1379' W of York Road  
(101 Church Lane)  
8th Election District - 3rd Councilmanic District  
Cardinal William H. Keeler Roman Catholic Archbishop of Baltimore,  
A Corporation Sole - Petitioners  
Case No. 97-379-SPH

Dear Mr. Biddison:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Special Hearing has been granted in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Zoning Administration and Development Management office at 887-3391.

Very truly yours,

Timothy M. Kotroco  
Deputy Zoning Commissioner  
for Baltimore County

TMK:bjs

cc: Cardinal William H. Keeler, The Catholic Center  
320 Cathedral Street, Baltimore, Md. 21201-4413

Rev. Monsignor Paul G. Cook, Pastor, St. Joseph Church & School  
101 Church Lane, Cockeysville, Md. 21030

People's Counsel  
Case File

Printed with Soy-based Ink  
on Recycled Paper



Petition for Special Hearing  
to the Zoning Commissioner of Baltimore County  
for the property located at 101 Church Lane, Cockeysville, MD 21030  
which is presently zoned "ML-1M"

This Petition shall be filed with the Office of Zoning Administration & Development Management. The undersigned, legal owner(s) of the property situated in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

A waiver of Section 26-278 of the Development Regulations to permit the demolition of a structure listed on the Maryland Historic Trust List as BA-1807.

Property is to be posted and advertised as prescribed by Zoning Regulations. I, or we, agree to pay expenses of above Special Hearing advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

Contract Purchaser/Lessee: (Not Applicable)

(Type or Print Name)

Signature

Address

City State Zipcode

Attorney for Petitioner:

THOMAS M. BIDDISON, JR.

GALLAGHER, EVELLIOUS & JONES

400 Park Charles - 218 North Charles St.

Baltimore, Maryland 21201 727-7702

When no attorney is designated and affix, under the penalties of perjury, that I am the legal owner(s) of the property which is the subject of this Petition.

Legal Owner(s):

Cardinal William H. Keeler

Roman Catholic Archbishop of Baltimore,

A Corporation Sole

(Type or Print Name)

Signature

The Catholic Center

320 Cathedral Street

Baltimore, Maryland 21201-4413

Rev. Monsignor Paul G. Cook, Pastor

101 Church Lane

Cockeysville, Maryland 21030 666-1619

ESTIMATED LENGTH OF HEARING

minutes for Hearing

ALL INFORMATION IS TO BE KEPT CONFIDENTIAL

RECEIVED BY: [Signature] 5/1/97

ZONING DESCRIPTION - ST. JOSEPH PARISH/COCKEYSVILLE

FROM THE POINT OF BEGINNING ON THE SOUTH SIDE OF CHURCH LANE A 30' PAVED RIGHT OF WAY A DISTANCE OF 1379 ± FROM THE CENTERLINE OF YORK ROAD WHICH IS A 80' RIGHT-OF-WAY.

SOUTH 17 DEGREES 14 MIN WEST FOR A DISTANCE OF 614.47'

THENCE RUNNING SOUTH 70 DEG. 30 MIN 20 SECONDS EAST FOR A DISTANCE OF 445.38'

CONTINUING SOUTH 84 DEG. 47 MIN 40 SEC EAST FOR A DISTANCE OF 158.34'

THENCE RUNNING N 6 DEG. 39 MIN EAST FOR A DISTANCE OF 623.31' TO A POINT NEAR THE R/W OF CHURCH LANE

THENCE RUNNING AND BINDING WCHURCH LANE NORTH 75 DEG 45 MIN. WEST FOR A DISTANCE OF 629.20' TO THE PLACE OF BEGINNING. THIS PROPERTY LOCATED IN THE EIGHTH DISTRICT AND THE THIRD COUNCILMANIC DISTRICT OF BALTIMORE COUNTY, MD. THE SUBJECT PROPERTY CONTAINING 9.174 ACRES MORE OR LESS.



Timothy M. Kotroco  
2/20/97

CERTIFICATE OF PUBLICATION

TOWSON, MD., March 27, 1997

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of successive weeks, the first publication appearing on March 27, 1997.

THE JEFFERSONIAN,  
A. Henrichsen  
LEGAL AD. - TOWSON

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the County Board of Commissioners of Baltimore County will hold a public hearing in Town of Towson, Baltimore County, Md., on the property described herein as follows:

Case #97-379-SPH  
101 Church Lane  
S/S Church Lane, 1379' W of York Road  
S. 2nd St. Church & School  
on the subject property  
2nd Councilmanic District  
Legal Owner(s):  
Cardinal William H. Keeler  
Roman Catholic Archbishop of Baltimore,  
A Corporation Sole

Special Hearing: to approve a waiver of the development regulations to permit the demolition of a structure listed on the Maryland Historic Trust List as BA-1807.  
Hearing: Tuesday, April 15, 7:00 p.m. at the Hearing Room, County Courts Bldg., 401 Bayview Avenue.

Interested & Eligible Parties: Zoning Commissioner for Baltimore County  
NOTES: (1) Hearing is an advisory proceeding. (2) Petitioner is responsible for providing accommodations for special accommodations. (3) For information concerning the hearing, please call the Zoning Office at 887-3391.

5/24/97 012957

BALTIMORE COUNTY, MARYLAND  
OFFICE OF FINANCE - REVENUE DIVISION  
MISCELLANEOUS CASH RECEIPT  
DATE: 3/10/97 ACCOUNT: R0016150  
AMOUNT: \$ 250.00  
RECEIVED FROM: ST. JOSEPH PARISH, COCKEYSVILLE  
FOR: NINE PAGES. 294.  
028-11032381CHRC  
RA 000211PM03-10-97 \$250.00  
VALIDATION OR SIGNATURE OF CASHIER



Baltimore County  
Department of Permits and  
Development Management

Development Processing  
County Office Building  
111 West Chesapeake Ave.  
Towson, Maryland 21204

97-379 SPH

ZONING HEARING ADVERTISING AND POSTING REQUIREMENTS & PROCEDURES

Baltimore County zoning regulations require that notice be given to the general public/neighborhood property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property (responsibility of which, lies with the petitioner/applicant) and placement of a notice in at least one newspaper of general circulation in the County.

This office will ensure that the legal requirements for advertising are satisfied. However, the petitioner is responsible for the costs associated with this requirement.

Billing for legal advertising, due upon receipt, will come from and should be remitted directly to the newspaper.

NON-PAYMENT OF ADVERTISING FEES WILL STAY ISSUANCE OF ZONING ORDER.

ARNOLD JABLON, DIRECTOR

For newspaper advertising:

Item No.: 379

Petitioner: William H. Keeler

Location: St. Joseph Parish / Cockeysville, Md.

PLEASE FORWARD ADVERTISING BILL TO:

NAME: Mr. Thomas H. Biddison, Jr., Gallagher, Evellius & Jones

ADDRESS: 400 Park Charles 218 North Charles Street

Baltimore, Md. 21201

PHONE NUMBER: 727-7702

AJ:ggg

(Revised 09/24/96)



Request for Zoning Variance, Special Exception, or Special Hearing

Date to be Posted: Anytime before but no later than 3/24/97

Format for Sign Printing: Black Letters on White Background:

## ZONING NOTICE

Case No. 97-379-SPH

A PUBLIC HEARING WILL BE HELD BY  
THE ZONING COMMISSIONER  
IN TOWSON, MD

PLACE:

DATE AND TIME:

REQUEST: A WAIVER OF THE DEVELOPMENT REGULATIONS

TO PERMIT THE DEMOLITION OF A STRUCTURE LISTED ON THE  
MARYLAND HISTORIC TRUST LIST

POSTPONEMENTS DUE TO WEATHER OR OTHER CONDITIONS ARE SOMETIMES NECESSARY.  
TO CONFIRM HEARING CALL 887-3391.

DO NOT REMOVE THIS SIGN AND POST UNTIL DAY OF HEARING UNDER PENALTY OF LAW  
HANDICAPPED ACCESSIBLE

996  
post-4.doc

TO: POTENTIAL PUBLISHING COMPANY  
March 27, 1997 Issue - Jeffersonian

Please forward billing to:

Thomas H. Biddison, Jr., Esq.  
Gallagher, Ebelius & Jones  
400 Park Charles  
218 N. Charles Street  
Baltimore, MD 21201  
727-7702

### NOTICE OF HEARING

The Zoning Commission of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 97-379-SPH

101 Church Lane  
S/S Church Lane, 1379 1/2 W of York Road  
St. Joseph Church & School

Legal Owner(s): Cardinal William H. Keeler, Roman Catholic Archbishop, a Corporation Sole

Special Hearing to approve a waiver of the development regulations to permit the demolition of a structure listed on the Maryland Historic Trust List as BA-1807.

HEARING: THURSDAY, APRIL 15, 1997 at 2:00 p.m., 4th floor hearing room, County Courts Bldg., 401  
Roxley Avenue

LAURENCE E. SCHMIDT

ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.  
(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, PLEASE CALL 887-3391.



Baltimore County  
Department of Permits and  
Development Management

Development Processing  
County Office Building  
111 West Chesapeake Avenue  
Towson, Maryland 21204

March 21, 1997

### NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 97-379-SPH

101 Church Lane  
S/S Church Lane, 1379 1/2 W of York Road  
St. Joseph Church & School

Legal Owner(s): Cardinal William H. Keeler, Roman Catholic Archbishop, a Corporation Sole

Special Hearing to approve a waiver of the development regulations to permit the demolition of a structure listed on the Maryland Historic Trust List as BA-1807.

HEARING: TUESDAY, APRIL 15, 1997 at 2:00 p.m., 4th floor hearing room, County Courts Bldg., 401  
Roxley Avenue

Arnold Jablon  
Director

cc: The Catholic Center  
Rev. Monsignor Paul G. Cook  
Thomas Biddison, Jr., Esq.

NOTES: (1) YOU MUST HAVE THE ZONING NOTICE SIGN POSTED ON THE PROPERTY BY MARCH 31, 1997.  
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.  
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 887-3391.

Printed with Soybean Ink  
on Recycled Paper



Baltimore County  
Department of Permits and  
Development Management

Development Processing  
County Office Building  
111 West Chesapeake Avenue  
Towson, Maryland 21204

April 10, 1997

Thomas N. Biddison, Jr., Esquire  
Gallagher, Ebelius and Jones  
400 Park Charles  
218 North Charles Street  
Baltimore, MD 21201

RE: Item No.: 379  
Case No.: 97-379-SPH  
Petitioner: Cardinal W. H. Keeler

Dear Mr. Biddison:

The Zoning Advisory Committee (ZAC), which consists of representatives from Baltimore County approval agencies, has reviewed the plans submitted with the above referenced petition, which was accepted for processing by Permits and Development Management (PDM), Zoning Review, on March 10, 1997.

Any comments submitted thus far from the members of ZAC that offer or request information on your petition are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. Only those comments that are informative will be forwarded to you; those that are not informative will be placed in the permanent case file.

If you need further information or have any questions regarding these comments, please do not hesitate to contact the commenting agency or Roslyn Eubanks in the zoning office (887-3391).

Sincerely,

*W. Carl Richards, Jr.*  
W. Carl Richards, Jr.  
Zoning Supervisor

WCR/re  
Attachment(s)

Printed with Soybean Ink  
on Recycled Paper

## BALTIMORE COUNTY, MARYLAND

### INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director  
Department of Permits and Development Management

DATE: April 4, 1997

FROM: Arnold F. 'Pat' Keller, III, Director  
Office of Planning

SUBJECT: 101 Church Lane

#### INFORMATION:

Item Number: 379

Petitioner: Cardinal William H. Keeler

Property Size: \_\_\_\_\_

Zoning: ML-1M

Requested Action: Special Hearing

Hearing Date: 4/15/97

#### SUMMARY OF RECOMMENDATIONS:

The next meeting of the Landmarks Preservation Commission will be held on April 10, 1997. If necessary, comments will be provided to the Zoning Commissioner after the meeting has been held.

Prepared by: *Jeffrey M. L...*

Division Chief: *Carol L. K...*

APK/JL:rdn

ITEM379/PZONE/ZAC1



Maryland Department of Transportation  
State Highway Administration

David L. Winstead  
Secretary  
Parker F. Williams  
Administrator

Ms. Roslyn Eubanks  
Baltimore County Office of  
Permits and Development Management  
County Office Building, Room 109  
Towson, Maryland 21204

RE: Baltimore County 3-21-97  
Item No. 379 JLL

Dear Ms. Eubanks:

This office has reviewed the referenced item and we have no objection to approval as it does not access a State roadway and is not affected by any State Highway Administration projects.

Please contact Larry Gredlein at 410-545-5806 if you have any questions.

Thank you for the opportunity to review this item.

Very truly yours,

*P. J. Smith*  
for Ronald Burns, Chief  
Engineering Access Permits  
Division

LG

My telephone number is \_\_\_\_\_

Maryland Relay Service  
1-800-668-7233  
Mailing Address: P.O. Box 37071, Baltimore, MD 21237-0707  
Street Address: 707 North Calvert Street, Baltimore, MD 21202

## BALTIMORE COUNTY, MARYLAND

### DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT

#### INTER-OFFICE CORRESPONDENCE

TO: PDM

DATE: 3/25/97

FROM: R. Bruce Seeley  
Permits and Development Review  
DEPRM

SUBJECT: Zoning Advisory Committee Meeting  
Meeting Date: March 24, 97

The Department of Environmental Protection & Resource Management has no comments for the following Zoning Advisory Committee items:

Item #'s:	<u>379</u>	388
	381	389
	382	390
	383	393
	385	394
	387	

RBS:sp

BRUCEZ/DEPRM/TXTSBP

## BALTIMORE COUNTY, MARYLAND

### INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director  
Department of Permits & Development  
Management

Date: March 31, 1997

FROM: Robert W. Bowling, Chief  
Development Plans Review Division

SUBJECT: Zoning Advisory Committee Meeting  
for March 31, 1997  
Item Nos. 378, 379, 380, 381, 382, 383, 384, 385, 386, 387 & 391

The Development Plans Review Division has reviewed the subject zoning item, and we have no comments.

RWB:HJO:cab

cc: File

ZONE331.NCC





700 East Joppa Road, Suite 901  
Towson, MD 21286-5500

(410) 887-4500

March 31, 1997

Arnold Jablon, Director  
Zoning Administration and Development Management  
Baltimore County Office Building  
Towson, MD 21204  
MAIL STOP-1105

RE: Property Owner: Cardinal William H. Keeler, Roman Catholic  
Archbishop of Baltimore, a Corporation Sole

Location: DISTRIBUTION MEETING OF March 24, 1997

Item No.: 379 Zoning Agenda:

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

1. Fire hydrants for the referenced property are required and shall be located at proper intervals, along an approved road in accordance with Baltimore County Standard Design Manual Sec. 2.4.4 Fire Hydrants, as published by the Department of Public Works.
4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.
5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1991 edition prior to occupancy.

REVIEWER: LT. ROBERT P. SAUERWALD  
Fire Marshal Office, PHONE 887-4881, MS-1102F  
cc: File

## PETITION PROBLEMS

47-379 SPH

### #378 --- MJK

1. Sign form is incomplete/incorrect.

### #379 --- JLL

1. Sign form is incomplete/incorrect.

### #380 --- RT

1. Folder says zoning is D.R.-3.5; petition says zoning is D.R.-5.5 - Which is correct?

### #382 --- CAM

1. Need printed or typed title and authorization of person signing for legal owner.
2. Need printed name and title and authorization of person signing for contract purchaser.
3. No review information on bottom of petition form.

### #385 --- MJK

1. Sign form is incomplete/incorrect.
2. No description on folder.
3. No zoning on folder.
4. No acreage on folder.
5. No election district on folder.
6. No councilmanic district on folder.
7. Plan is illegible.

RE: PETITION FOR SPECIAL HEARING \* BEFORE THE  
101 Church Lane, S/S Church Lane, 1379+/- \* ZONING COMMISSIONER  
W of York Rd (St. Joseph Church & School) \*  
Cardinal William H. Keeler, Roman \* OF BALTIMORE COUNTY  
Catholic Archbishop, a Corporation Sole \*  
Petitioner \* CASE NO. 97-379-SPH  
\* \* \* \* \*

#### ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final order.

*Peter Max Zimmerman*  
PETER MAX ZIMMERMAN  
People's Counsel for Baltimore County

*Carole S. Demilio*  
CAROLE S. DEMILIO  
Deputy People's Counsel  
Room 47, Courthouse  
400 Washington Avenue  
Towson, MD 21204  
(410) 887-2186

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of April, 1997, a copy of the foregoing Entry of Appearance was mailed to Thomas N. Biddison, Jr., Esq., Gallagher, Evelius & Jones, 218 N. Charles Street, Suite 400, Baltimore, MD 21201, attorney for Petitioners.

*Peter Max Zimmerman*  
PETER MAX ZIMMERMAN

The proposed 200 square foot Parish multipurpose center will greatly enhance the ability of the parish to provide additional public benefits to the county.

Mr. Arnold Jablon  
June 18, 1997  
Page 2

We find that Section 407 does apply to this project and that a waiver should be granted by the county. We hereby request your review of this issue.  
We await your response.

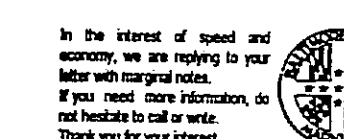
Very Truly Yours,  
MORRIS & RITCHIE ASSOCIATES, INC.

*Timothy F. Madden*  
Timothy F. Madden, ASLA, AICP  
Principal

enclosures

cc: Msgr. Paul Cook

Speed  
Letter



June 30, 1997

8th Election District

Dear Mr. Madden:

Please be advised that the Department of Permits and Development Management, Bureau of Zoning Review, acknowledges that the subject use is permitted within the M.L. zone pursuant to Section 407 of the Baltimore County Zoning Regulations.

This office cannot grant a waiver from the development regulations as this must be accomplished by the Development Review Committee (DRC).

On February 10, 1997 the possible exemption was tabled at the applicant's request. You must contact Mr. Don Ranscoe, Development Manager at 410-887-3353 and request that this item be placed on the next possible agenda.

Very truly yours,

*Mitchell J. Kellman*  
Mitchell J. Kellman  
Planner II  
Zoning Review

MJK:rye

c: zoning case 97-379-SPH

### GALLAGHER, EVELIUS & JONES

PARK CHARLES  
SUITE 400  
218 NORTH CHARLES STREET  
BALTIMORE, MD 21201  
TELEPHONE (410) 727-7702  
TELECOPIER (410) 887-3079  
TELECOPIER (410) 887-3085

WRITER'S DIRECT DIAL: (410) 347-1244

April 7, 1997

Office of Zoning Administration &  
Development Management  
401 Bosley Avenue  
Second Floor  
Court House  
Towson, Maryland 21204

Re: St. Joseph, Texas Parish  
101 Church Lane  
Cockeysville, MD 21030

Dear Sir/Madam:

Enclosed please find for filing Petitioner's Memorandum of Law in connection with the above matter.

If you have any questions, please contact me. Thank you for your assistance.

Very truly yours,

*Thomas N. Biddison, Jr.*  
Thomas N. Biddison, Jr.

TNBTR/jeg

Encl.  
cc: Rev. Msgr. Paul G. Cook (w/encl.)

5/15/97-jeg

#100-55

IN THE MATTER OF THE  
PETITION FOR SPECIAL HEARING  
TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY  
FOR THE PROPERTY LOCATED AT  
101 CHURCH LANE, COCKEYSVILLE, MD 21030

#### MEMORANDUM OF LAW

This matter comes before the Zoning Hearing Office as part of the development review process because the plans for the new construction of the St. Joseph's Texas Church complex envision demolishing an unused building, previously used as a residence, which is located exactly at the planned location of the multi-purpose building which will service both the Church and the School, and which must be located so that it is directly accessible to both to optimize the effectiveness of its use.

Section 26-278 provides that in a development plan, historic structures identified on the Maryland Historical Trust Inventory of Historic Properties must be preserved. This is so, even though the State law allowing for the designation of historic properties provides no protection for those properties.

The stringent provisions of Section 26-278 are greatly ameliorated by waiver provisions in the law allowing for such a requirement, as imposed by Section 26-278, to be waived if, among other reasons, compliance "would cause unnecessary hardship." Section 26-172(a)(2).

The facts are that the residence is of no further use to the Church, is deteriorating, and is located in the exact place which has been identified as the optimum location for a multi-purpose center, directly accessible through internal connections with both

IN THE MATTER OF THE  
PETITION FOR SPECIAL HEARING  
TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY  
FOR THE PROPERTY LOCATED AT  
101 CHURCH LANE, COCKEYSVILLE, MD 21030

#### AFFIDAVIT OF MSGR. PAUL G. COOK

I, Msgr. Paul G. Cook, solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of the following paper are true:

1. I am at least 21 years of age and I am competent to testify to the matters stated herein.
2. I have been a priest in the Archdiocese of Baltimore since my ordination in 1959. I have been the pastor of St. Joseph's, Texas since 1977.
3. The legal owner of the land and building of St. Joseph's is Cardinal William H. Keeler, Roman Catholic Archbishop of Baltimore, and his successors, a corporation sole.
4. The corporation sole holds the property for the benefit of the separately incorporated St. Joseph's Parish. Under the canon law of the Catholic Church, the Parish is responsible for its own operations under the oversight of the Archdiocese.
5. Our Parish entered into a long-term plan three years ago for capital improvements to the Church and school. The Parish was faced with physical plant demands, and that required attention in order to meet the religious and liturgical needs of the Parish. These needs include a multi-purpose center to meet the needs of the Church and its Parish school. The education provided by the Parish school is a critical component of the religious mission of the

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
(Northern Division)

Case No.: S-96-167

CARDINAL WILLIAM H. KEELER,  
ROMAN CATHOLIC ARCHBISHOP OF BALTIMORE,  
AND HIS SUCCESSORS, A CORPORATION SOLE, et al.

Plaintiffs

v.

MAYOR AND CITY COUNCIL OF CUMBERLAND, et al.

Defendants

MEMORANDUM IN SUPPORT OF PLAINTIFFS'  
MOTION FOR PARTIAL SUMMARY JUDGMENT

Thomas N. Biddison, Jr.  
Federal Bar No. 09847  
Peter E. Keith  
Federal Bar No. 01483  
David W. Kinkopf  
Federal Bar No. 23366  
GALLAGHER, EVELIUS & JONES  
218 North Charles Street  
Suite 400  
Baltimore, MD 21201-4033  
(410) 727-7702

Attorneys for Plaintiffs



Cardinal William H. KEELER,  
et al., Plaintiffs,  
v.  
MAYOR & CITY COUNCIL  
OF CUMBERLAND, et  
al., Defendants.

Civil Action No. S-96-167.

United States District Court,  
D. Maryland.

Oct. 15, 1996.

Church brought action challenging city's refusal to grant permission to demolish monastery and chapel in historic district. After finding Religious Freedom Restoration Act unconstitutional, 928 F.Supp. 581, the District Court, Shalton, J., held that (1) refusal to allow demolition of monastery and its replacement with buildings which would better serve needs of church violated church's freedom of religion under Federal and State Constitutions; (2) refusal to allow demolition of building which was financial drain on church and which church was required to maintain in safe repair was an unconstitutional taking under Federal and State Constitutions; but (3) proper remedy for unconstitutional taking is damages not order enjoining the government regulation.

Ordered accordingly.

#### 1. Health and Environment §25.5(3)

Statute providing that if application for alteration of structure applies to a structure which is deemed to be of unusual importance but no economically feasible plan can be formulated, the historic commission will have 90 days to negotiate with the owners and other parties in an effort to find means of preserving the building does not require that application for alteration or demolition be granted at the end of the 90-day period if no plan is formulated, and city ordinance requiring rejection of the application in such circumstances was not contrary to the statute. Md. Code 18-7, Art. 66B, § 8.02; Cumberland, Md., Ordinance No. 2870, § 7.c.

#### 2. Constitutional Law §84.5(18)

##### Health and Environment §25.5(6)

City's denial of certificate of appropriateness for demolition of monastery and chapel infringed church's free exercise rights if affidavits of church officials, taken as true, revealed that demolition implicated elements of the Roman Catholic religion, despite claim that affidavits were self-serving and should be viewed with suspicion because they represented subjective belief that there was a religious aspect to the determination to demolish the buildings. U.S.C.A. Const. Amend. 1.

#### 3. Constitutional Law §84.5(18)

Affidavits which stated that it was the obligation of church officials to hold property for proper ends of the church, including worship, doctrine, and governance, and not for secular goals, and that existing monastery and chapel in historic district interfered with church's goals and required replacement by more suitable buildings established that church's decision to demolish monastery and chapel involved exercise of faith, thus implicating First Amendment free exercise principles. U.S.C.A. Const. Amend. 1.

#### 4. Constitutional Law §84.1

Constitutionality of government regulation that burdens religious practice depends to large extent upon neutrality of regulation with respect to religion and upon state's commitment to uniform enforcement of its law. U.S.C.A. Const. Amend. 1.

#### 5. Constitutional Law §84.5(18)

##### Health and Environment §25.5(6)

City did not assert compelling state interest in support of historic preservation ordinance which would allow it to be enforced even when it had effect of burdening a particular religious practice. U.S.C.A. Const. Amend. 1; Cumberland, Md., Ordinance No. 2870, § 1.a.

#### 6. Constitutional Law §84.5(18)

##### Health and Environment §25.5(6)

City's refusal to grant church certificate of appropriateness for demolition of monastery and chapel impermissibly violated church's right to free exercise of religion.

